

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN HERNDON,

APPELLANT

Appellate Case No. 2011-184909

RECORD ON APPEAL

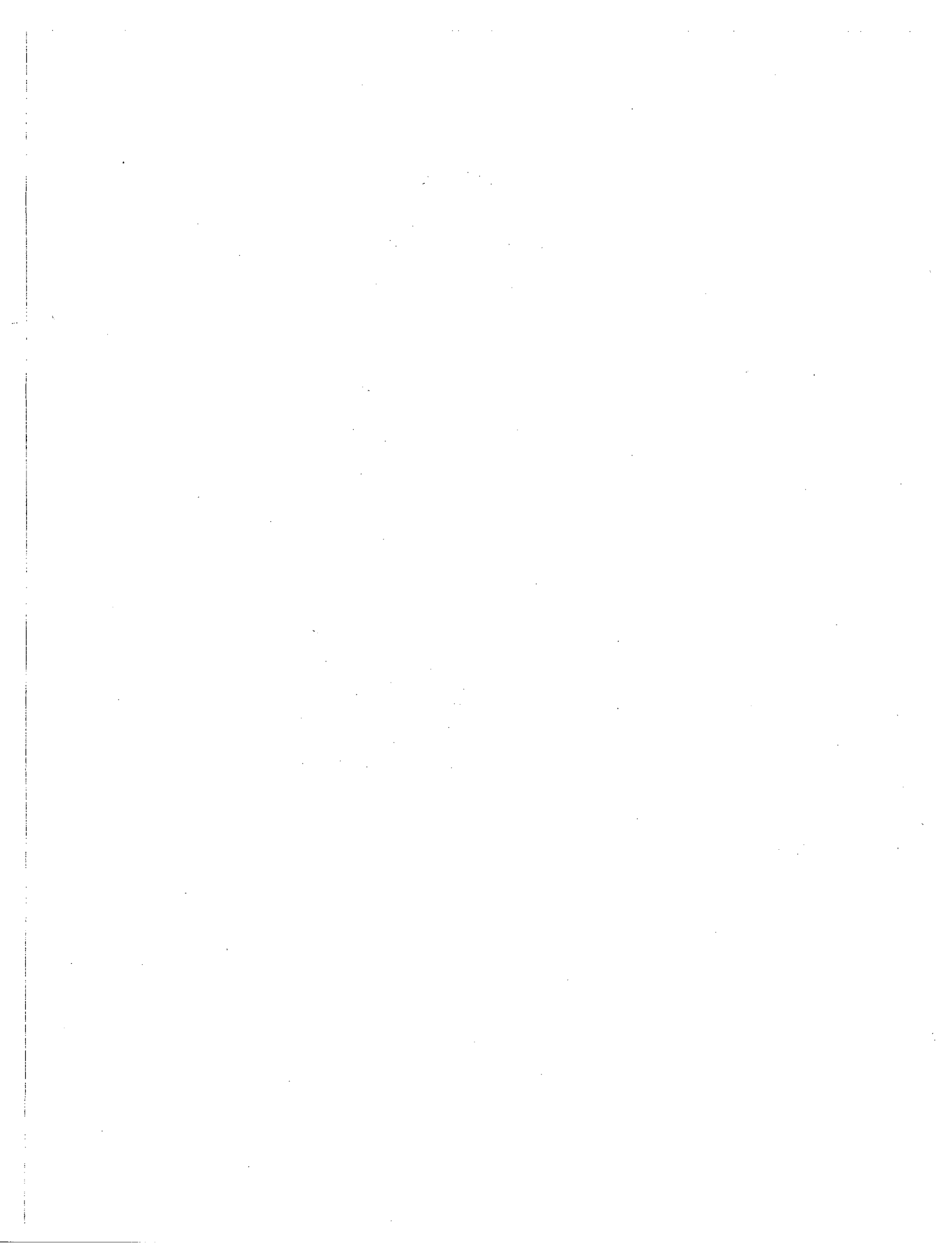
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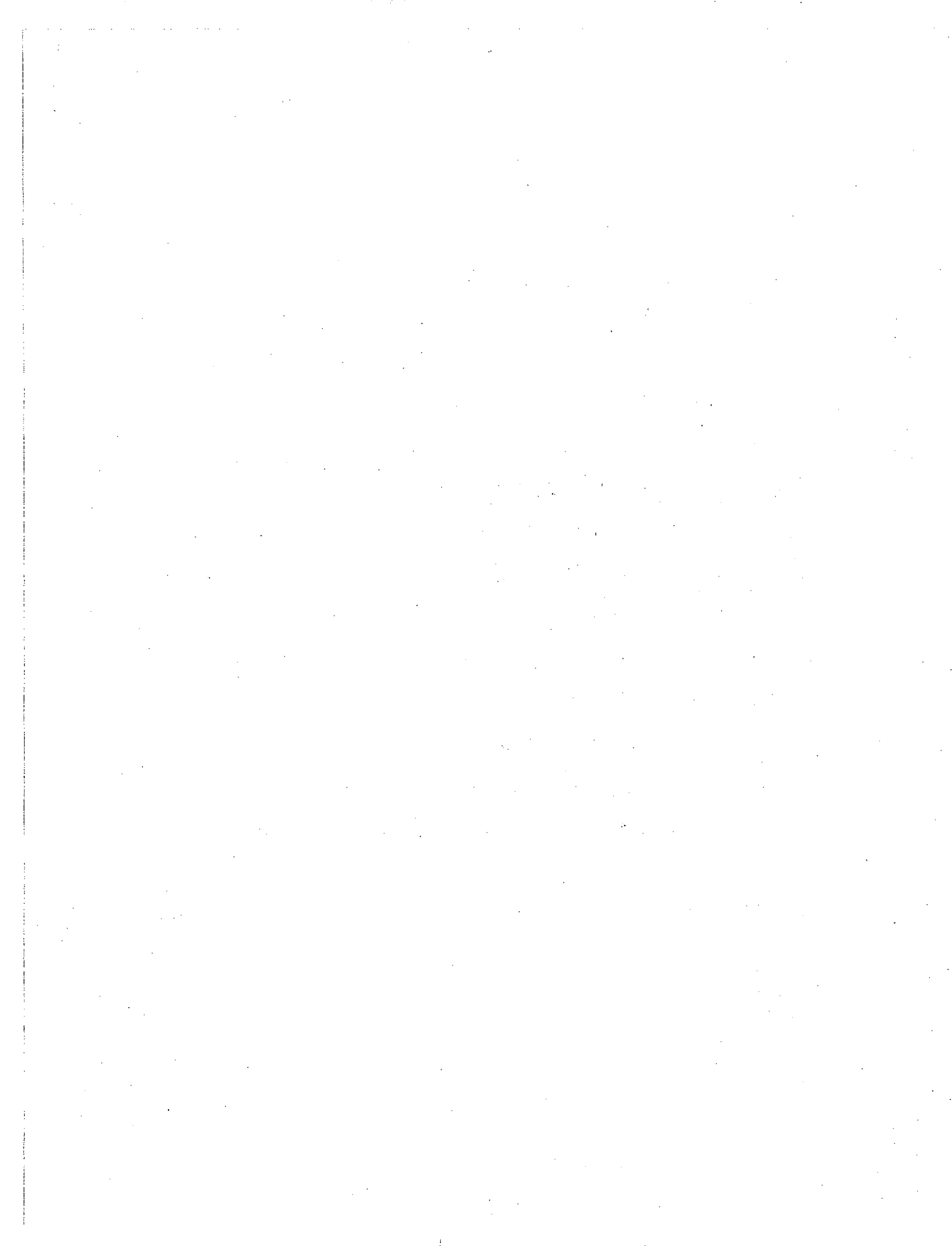
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2007-GS-07-1251

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)
5 V.)
6 JOHN GARY HERNDON,)
7 Defendant.)

TRANSCRIPT OF RECORD

8
9
10 JULY 1, 2010
11 Beaufort, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ERNEST KINARD, JUDGE
15

16
17
18 A P P E A R A N C E S:

19 MS. HUNTER SWANSON, Assistant Solicitor
20 Representing the State

21 MR. DUDLEY BRADSTREET RUFFALO, ESQUIRE
22 Representing the Defendant
23

24 Anne Bouley Meyer, RPR
25 Circuit Court Reporter
26

1 THE COURT: State of South Carolina versus
2 John Herndon.

3 (Whereupon, the clerk places the defendant
4 under oath.)

5 MS. SWANSON: Thank you, Your Honor.

6 Mr. Herndon is before you entering a plea
7 under North Carolina v. Alford to indictment number
8 2007-GS-07-1251. He was originally indicted as
9 CSC-1st with a minor, but is pleading guilty to
10 assault and battery of a high and aggravated nature.

11 The State has negotiated a sentence of 10
12 years suspended to five years of probation.

13 Conditions of probation are to include successful
14 completion of sex offender counseling. Should he
15 fail to complete this counseling successfully, he is
16 to be placed on the sex offender registry.

17 Additional conditions include no direct or
18 indirect contact with the victim or the victim's
19 family. They live on neighboring properties, so this
20 has been very difficult for them throughout this
21 process.

22 The defendant must also comply with all of
23 probations' rules and requirements, one of which
24 prohibits the defendant from having or carrying any
25 firearms. I know that this is something that the

1 victims have also been concerned about.

2 The parents of the victim are present in the
3 courtroom today in the front row, the Pearsons. They
4 are not in agreement with this negotiation. I do
5 appreciate their understanding and meeting with me so
6 that I could explain how I reached this negotiation.

7 But if it were up to them, the defendant would
8 be getting prison time. They will wish to address
9 the Court at the appropriate time, Your Honor.

10 THE COURT: Okay. Now if he is pleading
11 guilty under Alford versus North Carolina, he needs
12 to put that on the advisement of rights form, it's
13 not on the plea sheet. So he needs to say --

14 MR. RUFFALO: Any particular place?

15 THE COURT: Right there by where he signs and
16 you sign saying Alford versus North Carolina.

17 MS. SWANSON: Thank you, Judge. I put it on
18 the other one.

19 THE COURT: I understand. It's on the
20 advisement of rights form, it's not on the plea
21 sheet.

22 You have all these people vitally interested
23 in the case, I don't know any of them, or who's on
24 which side, I don't even know which side is which
25 sitting out there. But since nobody is much

1 satisfied with how things are going, we need to have
2 all the I's dotted and all the T's crossed.

3 MR. RUFFALO: Yes, sir.

4 THE COURT: Okay, you are John Herndon?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Herndon, you are about 60, 55
7 or what?

8 THE DEFENDANT: 59.

9 THE COURT: All right. And you live where?
10 It doesn't have it on here, normally I have it on
11 here?

12 THE DEFENDANT: On Hilton Head Island on

13 

14 THE COURT: Now, if you plead guilty under
15 Alford versus North Carolina, Mr. Ruffalo explained
16 all that to you I guess, but you are not a
17 constitutional scholar, right?

18 THE DEFENDANT: What?

19 THE COURT: You are not a constitutional
20 scholar?

21 THE DEFENDANT: No, sir.

22 THE COURT: What you are basically doing is
23 you are pleading guilty but you say I'm just doing
24 this to get it over with. I'm not really admitting I
25 did it, but I will go ahead and plead that I did it

1 and suffer the consequences?

2 THE DEFENDANT: Yes, sir. I'm not guilty but
3 I'm pleading to this --

4 THE COURT: That's what you are doing?

5 THE DEFENDANT: Because I'm three years into
6 it and I'm--

7 THE COURT: If you enter your plea, even if
8 you say it's under Alford, you subject yourself to
9 being sentenced just like you were pleading guilty
10 straight up; do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Now if somebody pleas in front of
13 me to this charge and the sentence is like 10 years,
14 I can give them 10 years.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If a sentence is negotiated, I
17 can't deviate from the negotiation. The attorney,
18 your attorney and the State tie my hands.

19 I can't say, well, it sounds like I should
20 give him seven years straight rather than this
21 probation stuff they have worked out. So my choices
22 are accept the negotiations or reject it. I cannot
23 alter the negotiation; do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now this apparently has been going

1 on for some time looking at it, the indictment says
2 things happened 10 years ago, up to eight years ago.

3 If you plead not guilty and the State wanted
4 to pursue the case, and it's pretty hard to prove
5 anything after 8 or 10 years, you would be entitled
6 to a jury trial. You waive all your trial rights
7 listed on this advisement of rights form if you plead
8 guilty, even though plead guilty under Alford versus
9 North Carolina; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: In a trial you would be presumed
12 innocent just like it tells you on this paper. You
13 could participate in a trial, you get to sit in the
14 courtroom and look at everybody when they testify.
15 Through your attorney you can question them in
16 detail.

17 You personally can testify or not. If you say
18 I testify and I didn't do it then it's just a
19 credibility question as to whether the jury believes
20 you or not. You can put up a defense, you can call
21 other people to testify to you and so forth or during
22 your trial.

23 Of course the State has the burden of proof
24 beyond a reasonable doubt and you don't have to prove
25 you are not guilty. It takes 12 jurors to find you.

1 guilty beyond a reasonable doubt in a trial. And you
2 have discussed all that with Mr. Ruffalo and you
3 don't want to go through a trial?

4 THE DEFENDANT: No, sir.

5 THE COURT: Now assuming I accept the
6 negotiation, which is all I can do, accept it or
7 reject it, and I put you like they said 10 years
8 suspended to 5 years probation, if you violate any
9 term of probation, you'd be brought back in front of
10 a judge. You don't get put in jail that day, chances
11 are, and a subsequent judge might be able to revoke
12 all or part of your probationary sentence.

13 They don't necessarily have to put you in jail
14 for 10 years, they can just say three years or
15 something. So anyway, a violation of any term of
16 probation could cause you trouble; do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Not knowing anything about the
20 facts other than these allegations, one of the
21 conditions that they ask is almost impossible, from
22 past experience, which is you are to have no contact
23 direct or indirect with any member of the family.

24 And I see a lot of people out there, and the
25 solicitor indicated you live in the area. I don't

1 know how you do it if you ride by and they want you
2 in jail they're going to call the cops and say, he
3 waved at me and so forth. You have to deal with that
4 forever, it's an almost impossible consequence.

5 So they don't need to be, you know, you just
6 don't even need to talk to them. If you say anything
7 to them they're going to try to put you away, chances
8 are, or they wouldn't be here wanting you to go to
9 jail forever which is what normally happens. So
10 that's a very serious consequence, no contact direct
11 or indirect with them.

12 You have properties and if they have an animal
13 that walks on your property you can't even call them,
14 you call somebody else to call them and say come get
15 your animal. That means no contact with them, that
16 condition, do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's a hard thing to live with
19 if you've got to go by their property everyday, which
20 I don't know, but she said you lived in the vicinity?

21 THE DEFENDANT: Yes, there is a lot that
22 separates my house from theirs.

23 THE COURT: well it's going to be tuff. The
24 best thing you can do if you ride by you just look
25 straight ahead.

1 Now the other condition that I heard is you've
2 got to complete sex offender counseling. If you
3 don't successfully complete that, you are going to
4 have to register as a sex offender forever. Believe
5 me, that's about worse than going to jail?

6 THE DEFENDANT: I agree.

7 THE COURT: You can't do anything. You can't
8 be within 100 feet of where a child is, you can't go
9 to Walmart or a softball game.

10 Anyway, if you don't like that sex offender
11 counseling once you start it, you can stop it but
12 there are going to be even worse consequences. Do
13 you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you think you can comply with
16 probation if I accept the negotiation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now here is how the system
19 operates. Lord knows how many people did we sentence
20 yesterday? Must have been 35.

21 MS. SWANSON: Yes, sir.

22 THE COURT: People plead guilty and I sentence
23 them, okay, or I preside over trials. But I don't
24 call cases for trial, that's what the solicitor's
25 office is doing. They prosecute cases.

1 We had one trial this week. The solicitor's
2 office called the witnesses, puts it up. I just
3 preside and say, tell the attorneys you can testify
4 to this, you can't testify to that. They argue to
5 the jury. I tell the jury the law.

6 If they believe A, they find him guilty. If
7 they believe B, they find him not guilty. Go have a
8 nice day. That's my function.

9 So I cannot bring a charge against you, even
10 after I listen to all the victims say, which they
11 feel better when they say whatever they're going to
12 say. But my role at this point is to sentence you or
13 not sentence you to what has been negotiated. I
14 don't have any other leave over that. Do you
15 understand me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Tell me about it.

18 MS. SWANSON: Thank you, Your Honor. This has
19 been a long and frustrating road for the victim and
20 her family, as this has been going on for about 10
21 years.

22 The allegations involved instances that took
23 place between July of 2000 and July of 2002 when
24 ^{Minor} the victim cause between 5 and 7 years old. A
25 delayed disclosure to her grandmother in 2004 brought

1 this to light initially.

2 At that time ^{Minor} disclosed that John Herndon
3 had touched her over her clothes. Also at that time
4 no arrest was made.

5 In 2007 the allegations resurfaced when
6 another family member was suspected of having been
7 abused. A second Hope Haven interview was set up
8 with ^{Minor} where she did disclose more detailed
9 touching, and that it began when she was about 5
10 years old on an out-of-state camping trip.

11 She told the interviewer that she went to
12 sleep in a tent with two girls, and woke up in
13 another tent with the defendant and her panties
14 pulled down. She also disclosed digital penetration,
15 and concluded that there were a total of about five
16 incidents in those two years where he had touched
17 her.

18 The defendant has no prior record. And when
19 Your Honor would like to hear from the victim, Mr.
20 Pearson would like to address the Court.

21 The COURT: Victim is now so they can respond
22 to him.

23 MS. SWANSON: Yes, sir.

24 Mr. Pearson, if you can stand up and state
25 your name for the record, please.

1 MR. PERSON: My name is Robert Packston
2 Pearson. It has been a very difficult, long road for
3 us. All I really want to say is I'm very
4 disappointed that it's gone to this. And I would
5 like to recite a poem that my daughter wrote for Hope
6 Haven and that's all I'm going to say.

7 All girls have a chance to survive. Roses are
8 red, violets are blue. You know I'm hurt, how about
9 you. What happens to one girl, happens to a lot.
10 Lots of luck, all molesters will get caught.

11 I stopped it from happening to my little
12 sister and my cousin, and maybe even a dozen. I know
13 it's not easy to go through, for pain and suffer. It
14 is almost as if my stomach hits the ground. Like me
15 all girls have to stay tough, speak the truth saying
16 stop that is enough.

17 That's all, Your Honor.

18 THE COURT: Okay, thanks, Mr. Pearson.

19 Anybody else?

20 MS. SWANSON: No, Your Honor.

21 THE COURT: Okay. All right.

22 MR. RUFFALO: I have known John for quite some
23 time, many, many years. Seated on your left are a
24 number of folks from the community who, on this side
25 of the courtroom, have come to support John.

1 When John was arrested there was a \$250,000
2 bond and he was released on his own recognizance
3 after three months. Judge Manning signed an order
4 allowing him to go back to his home, and that was
5 almost two-and-a-half years ago.

6 There have been no incidents since. There has
7 been no one else in the entire community where he has
8 lived for 35 years who have come out of the woods and
9 said that John did this to me or did something. He
10 has worked as an electrician all of his live. He has
11 been employed all of his life.

12 Our experts would have testified that it is
13 remarkable that the activity that was disclosed by
14 the children was all one-sided. They would have also
15 said that the child has been sexualized, but probably
16 not by John.

17 We see John in his community as a person who
18 for 30, 35 years has loaned electrical services to
19 people, fixed their homes, fixed their cars, looked
20 after their children.

21 There are so many thing that I could say about
22 John. For instance, he raised the two daughters of
23 his deceased best friend all their lives. They would
24 have been here to testify on his behalf. And one of
25 them occupies a position in the government who would

1 have testified about how wonderful a man John was in
2 raising them at his own expense.

3 I don't want to go on and on because I know
4 the Court's business is essential, but I do want to
5 say that I have known John for many years through
6 this process. The most interesting thing and
7 impressive thing I heard about two months ago John
8 was coming from a site where he was working and he
9 saw a small boy on the side of the road who had
10 obviously injured his leg and was limping trying to
11 get home, and he was going to stop immediately and
12 help him. And he stopped himself and he said to me,
13 he said, I realized at that moment I can never do
14 that again.

15 John is a wonderful man. He has raised
16 children and done a lot for his community. I will
17 refrain from commenting about how the original
18 allegations were found as to be unfounded totally,
19 and then after a year or two somehow they became
20 valid.

21 We ask Your Honor to accepted negotiated plea.
22 Sentence John according with the agreement under
23 Alford versus North Carolina with the stipulation
24 that he complete the sex offender course. And that
25 he be on probation for five years.

1 THE COURT: Okay. Now the victim's family,
2 that's kind of a generic term, we are talking about,
3 what, parents? The victim's parents, who?

4 MS. SWANSON: Well, Your Honor.

5 THE COURT: I'm not interested now in
6 listening to this again because he has spoken to a
7 third cousin twice removed. We need to define who he
8 can't initiate contact with.

9 MS. SWANSON: Certainly the mother and father
10 of the victim. I believe that they do have some
11 extended family that lives on the property though.

12 THE COURT: I'm not getting in it. The
13 victim, victims parents. Do they have grandparents?

14 MS. SWANSON: Mr. Pearson's grandparents that
15 are still living. Yes, sir.

16 THE COURT: Okay.

17 Mr. Herndon, you have a right to allocute,
18 that means you can say anything if you want to. You
19 don't have to, it's up to you.

20 MR. RUFFALO: I think you are fine, John,
21 unless you really want to say something I think
22 you're fine. It's just that John would not make it
23 through a trial physically. I think that's all he
24 wanted to say.

25 THE DEFENDANT: I'm basically worn out from

1 it. And the kids they do speak about next-door are
2 my biological grandchildren that live in the same
3 home.

4 THE COURT: Okay. Family members, I don't
5 know anything about the case other than what I heard.
6 I'm the longest serving active circuit judge by over
7 six years.

8 I don't know how many people I have sentenced.
9 About 15 years ago I counted up 36,000 and I quit
10 counting by then, you know. And I have presided over
11 innumerable trials like this. When a trial goes he
12 said, she said without any physical evidence to back
13 it up, or some other witness to the facts, I mean I
14 don't keep stats on it, but I would say 95% of the
15 time the defendant is found not guilty, especially if
16 the defendant testifies and says I didn't do it.
17 Then you have the word of -- and I don't know him --
18 a successful business person against the word of a
19 child with no back up.

20 So I know you all wanted a trial. And I have
21 not discussed the facts other than what I heard other
22 than you walked back and told me what kind of case it
23 was before I came out.

24 The prosecutrix would have a very, very
25 difficult time getting a conviction, just saying this

1 from past experience. In fact, if it happened 10
2 years ago and she was 5 at the time -- and I'm not
3 even suggesting it didn't happen, that's not my
4 function -- I'm only saying in a trial it's
5 exceedingly difficult to get a conviction without
6 physical evidence or another eyewitness.

7 With the time that has gone by it would be
8 really tough. This looks like the best resolution
9 for everybody, so I will accept the negotiation.

10 So, Mr. Herndon, I sentence you to 10 years.
11 I suspend it on the time that you've served, which he
12 was in jail for a while, right?

13 Place you probation for five years. And in
14 addition to the general probation conditions, you've
15 got two special conditions. One is you are not to
16 initiate contact with the victim, the victim's
17 parents or grandparents. Do you understand that?

18 THE DEFENDANT: I do.

19 THE COURT: You are not to initiate contact
20 with them. That's doesn't -- I can't tell you
21 whether or not to reply if you pass them on the
22 street and they say, hey, John, you can reply and
23 that's not a violation. But if you pass them on the
24 street and you don't see how to them, okay, just
25 tough.

1 Second condition which is very important. You
2 must successfully complete sex abuse counseling. If
3 not completed, you must register as a sex offender.
4 And that's forever. Do you have any questions?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay.

7 MR. RUFFALO: Thank you, Judge.

8 MS. SWANSON: Thank you, Your Honor.

9 (Whereupon, the proceedings in this matter
10 before the Court were adjourned.)

11 * * * * *

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
 COUNTY OF Beaufort
 STATE VS.
John G Herndon
 AKA:
 Race: W Sex: M Age: 58
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

U-10 yrs. IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS071251
 A/W#: 1027808
 Date of Offense: 6/23/2000
 S.C. Code §: 16-03-0655(1)
 CDR Code #: 0385

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: ABHAN

CONVICTED OF or PLEADS

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0013
 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. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ALFONSO W. SWANSON # 92934 SC Bar# 4851
 Swanson, Hunter Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 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 7.5 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. U-10

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: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E 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: 1) DO NOT INITIATE CONTACT
W/ VICTIM OR VICTIM'S PARENTS
GRAND PARENTS
 Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk _____
 Court Reporter: ANNE MEYER
 SCCA/217 (11/2009)

Presiding Judge James Kinney
 Judge Code: 2017
 Sentence Date: to 7-1-10

4) MUST SUC. complete SEX ABUSE COUNSEL IF
NOT completed MUST REGISTER AS A SEX OFFENDER

Form approved by
SC Attorney General
May 1988

Indictment Number:
02-GS-07-01251

PROBATION CITATION

No. C-07-10-0149

SOUTH CAROLINA V. JOHN G HERNDON	COUNTY: BEAUFORT <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">SCDC #</td> <td style="width: 50%;">SID #</td> </tr> <tr> <td></td> <td style="text-align: center;">00141063</td> </tr> </table>	SCDC #	SID #		00141063
SCDC #	SID #				
	00141063				
TO: JOHN G HERNDON					
YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below:					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Place Beaufort County Courthouse</td> <td style="width: 50%;">Room Main Courtroom</td> </tr> <tr> <td></td> <td>Date and Time 11/18/2010 9:00 AM</td> </tr> </table>	Place Beaufort County Courthouse	Room Main Courtroom		Date and Time 11/18/2010 9:00 AM	
Place Beaufort County Courthouse	Room Main Courtroom				
	Date and Time 11/18/2010 9:00 AM				
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.					
Violations Charged by violation of condition of probation number 10 and special condition as order in cause number 2007-GS-07-1251 by the Beaufort County Court of General Sessions on July 01, 2010					
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.					
HILTON HEAD ISLAND , South Carolina Date 10/26/2010	Probation and Parole Agent Agent # Scott Morris 0893				
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 <small>South Carolina Dept. of Probation/Parole Beaufort County Government Center South 339 William Hillman Parkway Hilton Head Island, SC 29926</small>	Date and Time 10-27-10 1420 Serving Officer's Signature 				
Sworn to and subscribed before me this <u>27th</u> day of <u>October</u> 2010 Signature of Notary Public	My Commission Expires <u>07/14/2015</u>				

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of BEAUFORT

Personally appeared before me, Scott Morris, who first being duly sworn, deposes and says that JOHN G HERNDON did within this county and State on the 26 day of October, 2010, violate certain conditions of release in the following particulars:

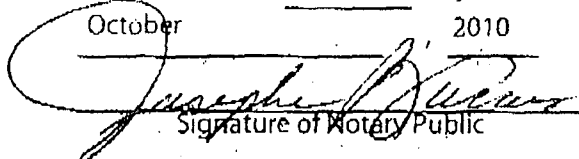
DESCRIPTION OF VIOLATION

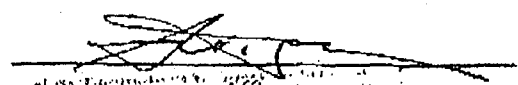
by violation of condition of probation number 10 and special condition as order in cause number 2007-GS-07-1251 by the Beaufort County Court of General Sessions on July 01, 2010

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:

Mr. John Herndon has been instructed by his agent to complete Sex Abuse Counseling with the office of Dr. William Burke, Summerville, SC. , Dr. William Burke requested the offender, as part of his counseling, to complete a 3rd and subsequent lie detector test in order to be allowed to attend sex abuse counseling classes. Mr. Herndon has refused to attend any further lie detector test although he has stated he is willing to attend counseling classes. Mr. Herndon has failed to follow the advice and instructions of his agent and special condition that he successfully complete sex abuse counseling

Sworn to and subscribed
before me this 26 day of
October 2010


Signature of Notary Public


Affiant

My Commission Expires: 02/14/2015

State of South Carolina, County of: **Beaufort**
 Offender's Name: **John G. Herndon**
 SID#: **00141063**

Warrant#: **C-07-10-0149**
 Date of Birth: [REDACTED]
 SCDC#:

Indictment Numbers: **2007-GS-07-1261** Offense and Offense Code: **ABHAN (0013)**

Supervision Program: **Probation** Begin Date: **July 01, 2010** End Date: **June 30, 2015**
 Supervision Level: **High**

Sentencing Judge: **Kinard** Sentencing County: **Beaufort**
 Sentencing Date: **July 01, 2010**
 Location: **Community**

Sentence: 10 years in SCDC Suspended upon Time Served and 5 years probation

Special Conditions: Do not initiate contact with victim of victims Parents or Grandparents,
 Must successfully complete sex abuse counseling, of not completed must register as a sex offender
 \$100 surcharge, \$ 25 LE fund fee, \$ 5 SCCJA fee

Current Address and Summary of Residence: [REDACTED]

Reporting: Monthly as required

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
self employed electrician	many years	present employment	

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
DNA	\$250	\$5 month	0	---	\$5	\$250
Surcharge	\$133.90	\$25 month	\$0	--	\$75	\$133.90
Supervision Fee	\$3000	\$50 month	\$200	10/5/10	\$0	\$2800

Violation Report

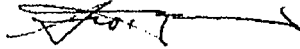
Prior Violation Dates	Prior Violations	Prior Violation Disposition
	none	

Details of the Present Violation: Mr. John Herndon has been instructed by his agent to complete Sex Abuse Counseling with the office of Dr. William Burke, Summerville, SC. Dr. William Burke requested the offender, as part of his counseling, to complete a 3rd and subsequent lie detector test in order to be allowed to attend sex abuse counseling classes. Mr. Herndon has refused to attend any further lie detector test although he has stated he is willing to attend counseling classes. Mr. Herndon has failed to follow the advice and instructions of his agent and special condition that he successfully complete sex abuse counseling

Agent's Recommendation: Judicial Review

Agent's Justification: One of the offender's Special Conditions was that he successfully complete sex abuse counseling. Until October 25, 2010, he has attended the counseling office of Dr. William Burke and his associates as instructed. However, on Oct 26 he informed his agent he would not attend a third lie detector test arranged for him by the Doctor's practice and that he would not participate in any further lie detector test. He does intend to comply with sex abuse classes but was told he cannot attend those until he admits guilt on a lie detector test. The offender believes he was not ordered to take counseling, not a lie detector test, especially 3 of them. Furthermore he does not want to admit guilt of a sex offence when he plead to an assault.

Scott Morris,



Date: November 10, 2010

Supervisor's Signature _____

Date: _____



South Eastern Assessments, Inc.

709 Old Trolley Road, Summerville, SC 29485
Office: (843) 821-2124 Fax: (843) 875-3148

November 8, 2010

Susanne Foote
Agent in Charge
Beaufort County Department of
Probation, Parole, & Pardon Services
Beaufort, SC

Re: John Herndon

Dear Agent Foote,

This letter is to notify you that Mr. Herndon has been terminated from our program due to noncompliance. Mr. Herndon was polygraphed by Whilden Baggett (Certified Polygrapher) on September 15, 2010 regarding the index offense. The use of the polygraph is a standard of care as established by the Association for the Treatment of Sexual Abusers (ATSA), an international organization dedicated to the assessment and treatment of sexual offenders. Mr. Herndon failed the exam and then admitted to the offense offering the following information: "That he was in bed and Kaysie got in bed with him. He said that he woke up and felt her beside him, and he reached down to pull her up closer to him and when he did his hand went inside her baggy boxer shorts. He said that his hand went inside her boxer shorts and he felt her vagina. He said that she had no underwear on and when he felt her bare vagina he started rubbing her vagina. He said that he did that for a short time, probably only seconds." (from Mr. Baggett's report). The entire polygraph session was videotaped.

I am aware that Mr. Herndon took an Alford Plea regarding the index offense. It is therapeutically necessary to have sexual offenders admit to their offense in order for treatment to be effective. Mr. Herndon made a veiled threat toward this writer on July 20th, 2010. He stated, "If you (i.e. this writer and probation) keep pushing me on this, I am going to have to do something and it won't be pretty." When confronted about the statement, he would not elaborate on what he meant.

Undergoing a polygraph exam is required of all clients who are in our sex offender treatment program. I have concerns about Mr. Herndon's behavior and threats. If you have any questions, please feel free to contact me at any time.

Sincerely,



William Burke, Ph.D. LPC
President & Clinical Director of SEA
Assistant Clinical Professor of Neuropsychiatry & Behavioral Sciences
University of South Carolina School of Medicine

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of BEAUFORT
STATE VS.

INDICTMENT#
2007-GS-07-1251
Probation CW#: C-07-10-0149

John G. Herndon
AKA:
Race: W Sex: M
DOB:
SSN:
SID#: 00141063

ABHANI
Name of Original Offense:
Original A/W#: I 027508
Date of Original Offense: 06-23-2000
Conviction S.C. Code §: 17-25-0030
Conviction CDR Code #: 01 01 1 13
Original Sentence: 10 and Special Condition

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 07/10/10 in the Court of General Sessions of BEAUFORT County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____ as set forth in the attached warrant(s) or citation(s) dated 10-26-10. 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)
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 _____ 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).

Additional Conditions ordered by the Court:

Rec. to be re admitted & accepted into Sex Offender Counseling if subject fails to comply bring back for reconsideration.

- 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 1 DAY 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 18th day of Nov 2010
BEAUFORT SC

Presiding Judge: 14th 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]
Signed this 18th day of Nov 2010 at BEAUFORT SC

Witnessed by: [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2007 GS 07 1251

STATE OF SOUTH CAROLINA,
Plaintiff

VS

JOHN G. HERNDON,
Defendant

TRANSCRIPT OF RECORD

JANUARY 28, 2011
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE D. CRAIG BROWN, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

A P P E A R A N C E S

SUEZANNE FOOT, PROBATION

JAMES BELL, Attorney at Law
Attorney for the Defendant

I N D E X

NO WITNESSES INTRODUCED

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EXHIBITS

NO EXHIBITS INTRODUCED

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1 Whereupon Court began at 9:35 A.M.)

2 THE COURT: Ms. Foot, are you ready to proceed
3 with Mr. Herndon?

4 MS. FOOT: Yes, sir.

5 THE COURT: Mr. Bell?

6 MR. BELL: Yes, sir.

7 THE COURT: We are back on the record with regards
8 to probation matter of John G. Herndon on indictment
9 number 07 GS 07 1251. Probation violation matter.
10 Anything additional that the State would like to add,
11 Ms. Foot?

12 MS. FOOT: No, sir.

13 THE COURT: Mr. Bell?

14 MR. BELL: Yes, sir, Your Honor.

15 THE COURT: If you do have something, before you
16 say anything, I want to hear from this young man that
17 was here yesterday.

18 MR. BELL: Yes, sir.

19 THE COURT: Sir, I'd be happy to hear from you.
20 If you would stand up at the gate. Please state your
21 full name for the record and I'll be happy to hear from
22 you.

23 MR. ROBERT PAXTON PIERSON: My name is Robert
24 Paxton Pierson. My daughter is the victim in this
25 case.

1 THE COURT: I need you to speak up, Okay?

2 MR. PIERSON: I apologize, sir. I'm getting the
3 flu and I'm losing my voice.

4 THE COURT: I think that's kind of going around
5 right now with the way the weather is going.

6 MR. PIERSON: Please be patient with me.

7 THE COURT: I will. Yes, sir.

8 MR. PIERSON: I'm sure you reviewed the original
9 case that was brought forth. It was one Mr. Herndon
10 was brought up on a charge of Criminal Sexual Conduct
11 with a Minor Under Eleven First Degree. He pled it
12 down to -- the State offered him a plea. He was pled
13 down to Assault and Battery of a High and Aggravated
14 Nature. He pled guilty more than once in Court. He
15 agreed to the terms of that plea.

16 Now he wishes to not comply with the terms of that
17 plea, which I and the rest of the family are definitely
18 in disagreement with. I feel that he shows a pattern
19 of not complying with the law and I think that the
20 State and Your Honor should proceed accordingly. He's
21 damaged my family. He's destroyed my daughter. And I
22 just think that this gentleman should have to attend
23 the classes. Get the help that he needs and comply.

24 THE COURT: Anything else you want to tell me,
25 sir?

1 MR. PIERSON: Yes, sir. I appreciate the State
2 and being put on this case.

3 THE COURT: Let me say this, Mr. Pierson, I
4 appreciate you being here yesterday and I told you I
5 would deal with this first thing this morning. That is
6 my intention. This case was brought before me at
7 approximately 5:30 yesterday afternoon and I took this
8 stuff with me last night and reviewed it and reviewed
9 it again this morning.

10 And I appreciate you being here this morning when
11 I asked you to come back here as well. Anything else
12 you want to tell me before I make a decision on this
13 matter?

14 MR. PIERSON: I don't know if it's something that
15 you can do but I would like to request the original
16 order of protection from Mr. Herndon be re-enacted,
17 with a thousand foot restraining order, no contact with
18 anyone in my immediate family or extended family ---

19 THE COURT: Now, that's part of the probation --
20 that's part of the terms and condition of his probation
21 anyway. That does stay in full force. Okay?

22 MR. PIERSON: We are concerned because of it
23 didn't sound like it covered the extended family.

24 THE COURT: Okay. Thank you Mr. Pierson.

25 MR. PIERSON: Yes, sir.

1 THE COURT: All right, Mr. Bell. Be happy to hear
2 from you.

3 MR. BELL: Thank you, Judge. May it please the
4 Court? I believe your law clerk provided you with a
5 copy of State vs Brown. The cite is 349SC414. That's
6 a Court of Appeals case from 2002. And essentially the
7 ruling is that a revocation indicates where counseling
8 is ordered but at sentencing the defendant is not on
9 notice that he must make admissions during counseling,
10 the revocation is not the correct remedy.

11 In this case the Circuit Judge revoked a person's
12 -- a defendant's probation for failure to make
13 admissions in a similar treatment as Mr. Herndon was
14 ordered to complete and he actually pled guilty.

15 The Court of Appeals went back and looked at the
16 transcript and I believe in that case he said the Judge
17 said he must obtain treatment for a problem. I realize
18 in this case, it says -- Judge Kinard said successfully
19 complete counseling or whatever program he required.

20 So, the original sentencing in State v. Brown and
21 in this case, did not on it's face require him to
22 complete -- I'm sorry, in this case it did -- require
23 him to complete a particular sex offender program and -
24 - or admit to his guilt in doing so.

25 THE COURT: What are you trying to tell me?

1 MR. BELL: What I'm trying to tell you is that in
2 this case, Judge Kinard did say -- if you'll look on
3 page 341 of State v. Brown, Judge Kinard did say he was
4 required to complete it but not to admit his guilt in
5 order to do so. I don't think that's in the transcript
6 and for that reason I don't think revocation is the
7 remedy. But maybe some -- an opportunity to conform
8 his probationary sentence with the sentencing order of
9 the Judge seems to be the remedy. And I don't know
10 what that is but it's not revocation and it would not
11 be sex offender revocation.

12 THE COURT: It would not be sex offender
13 registration?

14 MR. BELL: Yes, sir.

15 THE COURT: Well ---

16 MR. BELL: In this particular case, this person
17 was already required to ---

18 THE COURT: Right. Anything further, Mr. Bell?

19 MR. BELL: Beg the Court's indulgence.

20 THE COURT: And you did hand up a copy of that
21 case, didn't you? And I've had an opportunity to look
22 at that.

23 MR. BELL: I'd like to make that part of the
24 record, Your Honor.

25 THE COURT: State v. Brown?

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MR. BELL: Yes, sir.

THE COURT: That's fine. Any objection by the State?

MS. FOOT: No, sir.

MR. BELL: And it seems like the ruling here says, "Where the defendant is not recommended to therapy for sexually deviant behavior due to a general deniable of culpability, so long as the defendant was sufficiently on notice of the need to admit and discuss behaviors as a condition of his probation", and I don't think he was on notice of that at the time of sentencing. I do not believe revocation is appropriate for that reason.

Because he has otherwise, complied with all other conditions of probation.

THE COURT: All right, Mr. Herndon -- I'm sorry, Mr. Bell, are you finished?

MR. BELL: Yes.

THE COURT: Mr. Herndon, anything you want to tell me?

MR. JOHN HERNDON: Yes, sir. I wasn't aware exactly what was gonna be done. I was told it would be a class and I would attend that class for six or eight months and then after a year or so I could go back in front of a judge and communicate with him about early release, as far as that part goes.

1 And the second part is -- as far as the Pierson's,
2 which are my neighbors -- I've lived there twenty-nine
3 years. They inherited the house next door from their
4 grandparents. Two of the children over there are my
5 biological grandchildren. And I do feel bad for what's
6 happened with the child but I had no part in it. And
7 when I do get my chance to go back to Court for
8 something else I will reveal all the parties involved
9 and how she got to where she is today.

10 THE COURT: Anything further from the State?

11 MS. FOOT: No, sir.

12 THE COURT: From the defense?

13 MR. BELL: No, Your Honor.

14 THE COURT: All right. As I stated previously,
15 this matter came before me yesterday on a probation
16 violation matter. Mr. Bell handed up to me, yesterday,
17 a copy of the plea transcript from where Mr. Herndon
18 pled guilty on July 1, 2010 before the Honorable
19 Earnest Kinard.

20 And as apparent from, not only the sentencing
21 sheet, that Judge Kinard signed, but also from the
22 transcript that this was a negotiated sentence. And by
23 negotiated sentence, everybody knows in this courtroom
24 that practices law, probably those who do not, the
25 Court, in a negotiated sentence, the Court's hands are

1 bound to go along with the plea as negotiated or reject
2 it.

3 In this particular case, Judge Kinard went along
4 with the negotiated plea and that negotiated plea was a
5 ten-year sentence suspended to five years of probation.
6 Conditions of probation -- and I am reading from the
7 plea transcript -- conditions -- page two-- conditions
8 of probation are to include successful completion of
9 sex offender counseling. Should he fail to complete
10 this counseling successfully, he is to be placed on the
11 Sex Offender Registry.

12 Additional conditions that were set forth and
13 explained to Mr. Herndon was that he was to have no
14 direct or indirect contact with the victim or the
15 victim's family.

16 Furthermore, on page five, Judge Kinard explained
17 to Mr. Herndon that this was a negotiated sentence and
18 Judge Kinard, on page five, says, "I can't deviate from
19 the negotiation. The attorney -- your attorney and the
20 State tie my hands.

21 On page seven of the plea, Judge Kinard advises
22 Mr. Herndon if he accepts the plea, which is all he can
23 do -- accept it or reject it -- if you violate any term
24 of probation you'd be brought back in front of a Judge.

25 Page nine of the plea transcript, Judge Kinard

1 tells Mr. Herndon that if he doesn't successfully
2 complete sex offender counseling, he is going to have
3 to register as a sex offender, forever.

4 Judge Kinard goes on to say, "Believe me, that's
5 about worse than going to jail" and the defendant's
6 response -- Mr. Herndon's response is, "I agree".

7 Now having said all that, the Court recognizes
8 that this plea was a plea pursuant to North Carolina v.
9 Alford. Under North Carolina v. Alford, an individual
10 is allowed to plead guilty without admitting his guilt
11 to take the benefit of a bargain, so to speak.

12 Mr. Herndon did plead under North Carolina v.
13 Alford without admitting his guilt. In Court, under
14 North Carolina v. Alford, he's not required to admit
15 his guilt, in Court. However, a North Carolina v.
16 Alford plea, for all intents purposes on a RAP sheet is
17 looked at as a plea of guilty.

18 Judge Kinard then says, this plea, by once again
19 advising Mr. Herndon that he must successfully complete
20 sex abuse counseling. If not completed, he must
21 register as a sex offender. He tells Mr. Herndon that
22 that is forever. He asks Mr. Herndon if he has any
23 questions and Mr. Herndon says, "No, sir".

24 The point in putting all of that on the record is
25 this, I have reviewed the transcript, I have reviewed

1 the sentence sheet, I have reviewed a letter that was
2 handed up to me by Ms. Foot, dated November 8, 2010
3 from Southeastern Assessments, it appears to have been
4 signed by Dr. William Burke -- and Mr. Bell, have you
5 seen that?

6 MR. BELL: Yes, Your Honor, I have.

7 THE COURT: Okay. As well as a document with the
8 heading The Department of Parole and Pardon Services
9 dated January 11, 2011. Ms. Foot, who was this
10 prepared by?

11 MS. FOOT: Me.

12 THE COURT: Have you seen this, Mr. Bell?

13 MR. BELL: Yes, Your Honor.

14 THE COURT: Any objection to either of these
15 documents -- that document prepared by Ms. Foot --
16 being made a part of the record?

17 MR. BELL: No, sir.

18 THE COURT: Any objection of this letter from
19 Southeast Assessments being made a part of the record,
20 Mr. Bell?

21 MR. BELL: I don't guess so.

22 THE COURT: Any objection to the Form 1106 being
23 made a part of that record, Mr. Bell?

24 MR. BELL: No, sir.

25 THE COURT: Now, having said all of that, the

1 Court did review the case that Mr. Bell cited, State v.
2 Brown, 563SE2nd339, and in large part it's a little bit
3 different than what we have here today but the Court
4 did say, and I think Mr. Bell did point this out, that
5 sex offender counseling did not require him to admit
6 his guilt -- he wasn't advised -- he hadn't been told
7 that he had to admit his guilt in order to complete sex
8 offender counseling.

9 It's clear, from Judge Kinard's sentence sheet,
10 condition two of the sentence that he, one, must
11 complete it and if he doesn't complete it he's got to
12 register. It's an either or proposition and that's my
13 reading of it. It's an either or proposition.

14 He hasn't completed it. He's been given every
15 opportunity to complete it. I think he was in front of
16 Judge Mullen last month -- excuse me, in November -- is
17 that right, Ms. Foot?

18 MS. FOOT: Yes, sir.

19 THE COURT: She ordered him to go back and he
20 didn't complete it. He has, at least from what I've
21 heard here today -- I mean, he's done everything else
22 he's suppose to do. He's reported like he's suppose
23 to?

24 MS. FOOT: Yes, sir.

25 THE COURT: I haven't heard any indication that he

1 was -- had any contact -- directly or indirectly with
2 the victim; is that right?

3 MS. FOOT: Right.

4 THE COURT: He hasn't violated that portion of the
5 probation that Judge Kinard ordered, has he?

6 MS. FOOT: No, sir.

7 THE COURT: I haven't heard that. My point is the
8 only thing I've heard is that he hasn't done his
9 counseling?

10 MS. FOOT: Yes, sir.

11 THE COURT: My reading of the sentencing sheet is
12 it's an either or proposition. It's an either or
13 proposition. If you don't do it, you've got to
14 register and that's what Judge Kinard explained to him
15 and went over with him.

16 Because he hasn't successfully completed sex abuse
17 counseling, I'm gonna order that he now has to register
18 as a sex offender. He now has to register as a sex
19 offender. He's had the opportunity to go through sex
20 abuse counseling. He has not successfully completed it
21 as ordered by Judge Kinard and so therefore, I am
22 ordering that he register as a sex offender based on
23 his failure to complete counseling.

24 I am not going to revoke his probation because I
25 think it was an either or proposition based upon my

1 reading of the sentence sheet. And I cannot -- I'm
2 left with trying to interpret what Judge Kinard
3 intended and my interpretation is what his intent was,
4 based upon his sentence sheet and based upon the plea
5 transcript it was an either or proposition.

6 Now if he doesn't register as a sex offender or if
7 he violates the other conditions of probation it would
8 make if full force and affect. If he violates that,
9 bring him back before me or some other Judge and he's
10 looking at ten years in the penitentiary. Plain and
11 simple.

12 MR. BELL: May I respond, Judge?

13 THE COURT: Yes, sir.

14 MR. BELL: And Judge, in your ruling, you
15 acknowledge that Judge Kinard never put Mr. Herndon on
16 notice that he must admit guilt in order to complete
17 sex offender counseling. I note that the probation
18 order, on its' face, does not require him to complete a
19 particular sex offender program or admit his guilt in
20 order to do so. And I don't believe anywhere in the
21 transcript he was put on notice of the fact that he
22 would have to make admissions and that's what the case
23 of State v. Brown was saying ---

24 THE COURT: Well, I'm not finding he willfully
25 violated his probation at this point but I'm saying

1 that he hasn't completed -- successfully completed sex
2 abuse counseling which is a directive that was required
3 by Judge Kinard. And because he hasn't done that it
4 was an either or proposition. He hasn't done it and
5 he's now got to register as a sex offender. He's been
6 given every opportunity to complete that program. For
7 whatever the reason was -- I mean, I've read what the
8 letters say from Dr. Burke -- I mean, I've read it and
9 it's part of the record. My reading of the sentencing
10 of the intent of pJudge Kinard was it is an either or
11 proposition. You can either do this or you are going
12 to register. He hasn't done it, so he's gonna
13 register. If he doesn't register, he's in violation of
14 the law. I'm not adding a condition of probation under
15 State v. Davis, 375SC12, State v. Davis, where in the
16 probation revocation Judge, at that time, because the
17 defendant did not register as a sex offender, he did
18 not successfully complete sex abuse counseling, the
19 probation revocation Judge said, "Now you've got to
20 register as a sex offender". The Court said you can't
21 do that because you are adding a condition of
22 probation. I'm not adding a condition of probation.
23 That condition, that he's got to register if he doesn't
24 successfully complete it was put on him at the time
25 that he pled guilty and the time that he was sentenced

1 by Judge Kinard and that's an order of this Court.

2 Anything further? Mr. Bell?

3 MR. BELL: Nothing further.

4 THE COURT: Ms. Foot?

5 MS. FOOT: No, Your Honor.

6 THE COURT: All right, good luck to you, Mr.

7 Herndon.

8 MR. HERNDON: I would like to speak.

9 THE COURT: Sir?

10 MR. HERNDON: I would like to speak.

11 THE COURT: Go ahead.

12 MR. HERNDON: I did everything possible to go to
13 this class because I understand the register and it's a
14 fate worse than death as far as I'm concerned. I have
15 five kids and ten grandkids. I do not want them to
16 think they grandfather is this way because people will
17 say that to them for the rest of their lives.

18 THE COURT: Well, that's my order. I appreciate
19 you saying that. My order is that you are now required
20 to register as a sex offender because you did not
21 successfully complete that program that was ordered by
22 Judge Kinard.

23 MR. HERNDON: I tried and I was escorted out by a
24 deputy.

25 THE COURT: Thank you. That will conclude this

1 matter.

2 MS. FOOT: Thank you, sir.

3 (Whereupon the Hearing concluded at 9:59 A.M.)

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--- END OF TRANSCRIPT OF RECORD ---

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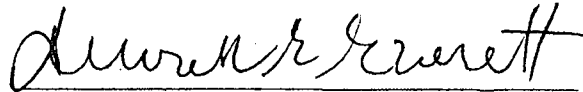
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I, the undersigned, Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 28th day of January 2011.

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

May 26, 2011



Deborah E. Everett
Official Court Reporter

Form Approved by
SC Attorney General
May 1988

Indictment Number:
02-G5-07-01251

PROBATION CITATION

No. C-07-11-0011

SOUTH CAROLINA V. JOHN G HERNDON	COUNTY: BEAUFORT	
	SCDC #	SID # 00141063

TO: JOHN G HERNDON

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place 102 Ribault Road, Beaufort, SC 29902	Room 1 or 2
	Date and Time 1/27/2011 9:00 AM

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged
Mr. Herndon is presently in Violation on his Probation as ordered in Cause#2007-G5-07-1251 by the Honorable Judge Kinard in the Court of General Sessions of Beaufort County on 7/1/2010. He has violated condition#'s: 10 and special conditions by:

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.

BEAUFORT, South Carolina	Probation and Parole Agent Suzanne C. Foot	Agent # 234
Date 1/12/2011	<i>Suzanne C. Foot</i>	

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. *Certified - A True Copy*

Place South Carolina Dept. of Probation/Parole Beaufort County Government Center South 539 William Hilton Parkway Hilton Head Island, SC 29928	Date and Time 1-13-11 9:40 AM
	Serving Officer's Signature <i>Beverly Cabanis</i> Clerk of Court Beaufort County, SC

Sworn to and subscribed before me this 13 day of JANUARY, 2011

[Signature]
Signature of Notary Public

My Commission Expires June 18, 2011

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of BEAUFORT

Personally appeared before me, Suzanne C. Foot, who first being duly sworn, deposes and says that JOHN C HERNDON did within this county and State on the 12 day of January, 2011, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Mr. Herndon is presently in Violation on his Probation as ordered in Cause#2007-GS-07-1251 by the Honorable Judge Kinard in the Court of General Sessions of Beaufort County on 7/1/2010. He has violated condition#'s: 10 and special conditions by:

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:

Failure to follow the advice and instructions of his agent and the continuation order by Judge Mullen on 11/18/2010 by: Not being able to attend Sex Offender Counseling, offender will NOT admit his guilt, which is a requirement of Sex offender counseling. This action constitutes a violation of his original agreement.

Sworn to and subscribed before me this 12 day of January, 2011

[Signature]
Signature of Notary Public

My Commission Expires: 06/14/2015

[Signature]
Affiant

Violation Report

MULLEN

Offender's Name: **JOHN G HERNDON**
 State of South Carolina, County of: **BEAUFORT**
 SID#: **00141063**

Warrant#: **C-07-11-0011**
 Date of Birth: **[REDACTED]**
 SCDC#:

Indictment Numbers:
07-GS-07-01251

Offense and Offense Code:
13 - Assault and battery of a high and aggravated nature (ABHAN) (no longer used) (see 3411, 3412, 3413)

Supervision Program: **Probation** Begin Date: **7/1/2010** End Date: **6/30/2015**
 Supervision Level: **Standard Supervision**

Sentencing Judge: **017 - Kinard, Jr., J.** Sentencing County: **BEAUFORT**
 Sentencing Date: **7/1/2010**
 Location (Build Response): **Community**

Sentence:
 TEN YEARS SUSPENDED WITH PROBATION FOR FIVE YEARS /// hearing on 11-18-10 before Judge Mullen continue on probation, required to be re admitted and accepted inot sex offender counseling. If subject fails to comply bring back for reconsideration.

Special Conditions:
 Fine - 133.90 / Fine/Costs and Assessments payable as directed by the Court.; Other1 - do not Intlate contact with victim or victims parents or grandparents; Other2 - must successfully complete sex abuse counseling, if not completed must register as a sex offender

Current Address and Summary of Residence:
 [REDACTED] SC 29926, BEAUFORT, USA,

Reporting:
 Offender reports monthly as instructed. *OKAY!*

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
HERNDON'S ELECTRIC	7/9/2010 -		\$1.00

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
DNA Fee	\$250.00	\$5.00/M	\$0.00		\$20.00	\$250.00
Regular Supervision	\$3,000.00	\$50.00/M	\$350.00	1/4/2011	\$0.00	\$2,650.00
Fines						
Surcharge	\$133.90	\$25.00/M	\$0.00		\$133.90	\$133.90

Prior Violation Dates	Prior Violations	Prior Violation Disposition
11/18/2010	by violation of conditlon of probation number 10 and special conditions as order In cause number 2007-GS-07-1251 by the Beaufort County Court of General Sessions on July 01, 2010	Recommend to be re-admitted and accepted Into Sex Offender Counseling. If subject falls to

Offender's Name: JOHN G HERNDON

comply, bring back for reconsideration, Per Judge Mullen.

Details of the Present Violation:

Mr. Herndon is presently in violation on his Probation as ordered in Cause#2007-GS-07-1251 by the Honorable Judge Kinard in the Court of General Sessions of Beaufort County on 7/1/2010. He has violated condition #'s: 10 and special conditions by: - Failure to follow the advice and instructions of his agent and the continuation order by Judge Mullen on 11/18/2010 by: Not being able to attend Sex Offender Counseling, offender will NOT admit his guilt, which is a requirement of Sex offender counseling. This action constitutes a violation of his original agreement.

Agent's Recommendation:

Court's discretion

Agent's Justification:

Offender states that he plead under NC vs Alford, he is NOT guilty, but there was no other choice.

Suzanne C. Foot

Supervisor

Date: 1/12/2011

Supervisor's Signature

Suzanne C. Foot

Date:

1/12/2011

*1/27/2011
Judge Brown -*

*State v Brown -
State v Davis -*

*Victim's parents
are present in
the courtroom -*

(NC v Alford)

*Victim ask
for restraining
order -*

*neg. sentence - Court can go along
or
reject it.*

*Judge as
said - as
long as D
is on Prob
restraining
order
effect.
Victim ask
order - Judge said
its on record. Δ is
succ. comp. of soc No contact.
if failed - to
be placed on S.P.*

*Must register as a
sex offender.*

*Not direct/indirect
contact of vic. and/or
vic. family.*

*If D makes any direct/indirect
bring before courts.*

IN THE COURT OF GENERAL SESSIONS

STATE BEAUFORT VS. JOHN G. HEARDON
 AKA: _____
 Race: M Sex: W
 DOB: _____
 SSN: _____
 SID#: 00141063

INDICTMENT# 2007-GS-07-1251
 Probation CW#: C-07-11-0011
 Name of Original Offense: ABHWN
 Original AWW#: F027808
 Date of Original Offense: 06-23-2000
 Conviction S.C. Code §: 17-25-0030
 Conviction CDR Code #: 010113
 Original Sentence: Revised SCDC Supreme Court Order

The above named defendant has been charged with violating the conditions of probation ordered on 07/01/10 in the Court of General Sessions of BEAUFORT County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on NOV 19 2010 as set forth in the attached warrant(s) or citation(s) dated 1/2/11. 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)
10 - 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 _____ 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).
- Additional Conditions ordered by the Court:

must register as sex offender for life.

- 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 1 DAY 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 28 day of January 2011
BEAUFORT SC

[Signature]
 Presiding Judge 14th Judicial Circuit

You are hereby advised that under this 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.

Defendant's Signature [Signature]
28 day of January 2011
 Day Month Year

Witnessed by [Signature]
BEAUFORT SC
 City

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

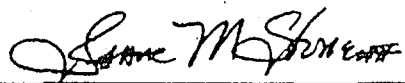
INDICTMENT

At a Court of General Sessions, convened on July 26, 2007, the Grand Jurors of Beaufort County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That John Gary Herndon did in Beaufort County between July 23, 2000 and July 23, 2002 willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or cunnilingus and/or any intrusion, however slight, of any part of the victim's body or of any object into the genital and/or anal opening of the victim's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than 11 years of age. The victim, Minor was between the ages of 5 and 7 at the time this occurred. All in violation of SC Code of Laws § 16-3-655.

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



 ISAAC M. STONE, III, SOLICITOR

WITNESSES

A. VIENS/BCSO

ARREST WARRANT NUMBER

027808

ACTION OF GRAND JURY

True Bill

[Signature]
oreperson of Grand Jury
ate:

VERDICT

oreperson of Petit Jury
ate:

DOCKET NO. 2007-GS-07-01251

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

JULY TERM 2007

THE STATE

vs.

JOHN GARY HERNDON

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)

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

Defendant

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

Defendant

Witness:

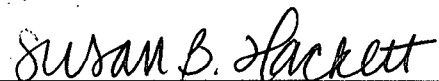
C.C.C. PLS. AND G.S.

[Vertical signature]

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 19th, 2012



Susan B. Hackett
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