

3
STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Anderson County

Honorable J. Cordell Maddox, Circuit Court Judge

RECEIVED

AUG 17 2017

SC Court of Appeals

THE STATE,

RESPONDENT

V.

SHAWN ALAN MITCHELL,

APELLANT

APPELLATE CASE NO. 2016-000560

RECORD ON APPEAL

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State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Shawn Mitchell,

Defendant.

2012-GS-04-01034

November 17, 2014

Transcript of Record

B E F O R E:

The Honorable J. Cordell Maddox, Judge

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

Scott Metcalf, Probation Agent
On Behalf of the State

Octavia Wright, Esquire
Attorney for the Department of Probation, Pardon and Parole

Shawn Mitchell
Pro se Defendant

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:57 a.m.)

4 THE COURT: Okay. This is Shawn Mitchell,
5 grand larceny, five years suspended to the service of
6 basically a year, then two years probation. Basically he
7 owes money?

8 MR. METCALF: And tested positive for cocaine.

9 THE COURT: When did he test positive?

10 MR. METCALF: It was on October the 15th.

11 THE COURT: Okay.

12 MR. METCALF: It was on the bottom of the
13 second page, Your Honor.

14 THE COURT: It was what?

15 MR. METCALF: It was on the bottom of the
16 second page.

17 THE COURT: Oh, I see.

18 MR. METCALF: Your Honor, if it pleases the
19 Court?

20 THE COURT: Yes.

21 MR. METCALF: We went to an administrative
22 hearing. When I was preparing for the administrative
23 hearing case, I noticed that Mr. Mitchell has a criminal
24 offense of a lewd act prior to 1997. And in 2012, he has
25 a conviction of failing to register, which under the

1 mandates for failing to register which is the mandate for
2 placement on GPS. I advised my attorney's office, and
3 the attorney's office is here today wanting to let you
4 know about the GPS. Also, this is a probation violation.

5 THE COURT: Okay.

6 Yes, ma'am? I'm confused.

7 MS. WRIGHT: Okay.

8 THE COURT: I mean, I understand. But how did
9 -- so he was convicted prior to when?

10 When was your conviction?

11 THE DEFENDANT: '97.

12 THE COURT: Okay.

13 Yes, ma'am?

14 MS. WRIGHT: Okay. May it please the Court,
15 Your Honor. As Agent Metcalf just mentioned, I think in
16 the midst of him preparing for his administrative hearing
17 for his other probation violations, he discovered within
18 his criminal history that he had been convicted for this
19 1997 offense of lewd act on a child who was approximately
20 eleven on November ---

21 THE DEFENDANT: She was ---

22 MS. WRIGHT: She was less than sixteen.

23 THE COURT: --- less than sixteen.

24 MS. WRIGHT: I have a copy of the sentence
25 sheet regarding that particular charge if you'd like to

1 see that, sir. But back on November the 10th of '97, he
2 was convicted of lewd act on a child under sixteen. As a
3 result of that offense, he was placed on the Sex Offender
4 Registry pursuant to Section § 23-3-430.

5 Again, on May 17th of 2012, as mentioned by Agent
6 Metcalf, he was convicted in violation of the Sex
7 Offender Registry per section § 23-3-470 (A) which was a
8 violation of Article 7 of Title 23. And so as a result
9 of that violation of failing to register by the statute
10 under § 23-3-54 (B), the Court must order that he be
11 placed on electronic monitoring -- on an electronic
12 monitoring device. And that is what Agent Metcalf has
13 requested the legal office present to you today in terms
14 of asking that you please order by the statute the
15 mandatory language in the statute which says that he must
16 be ordered to be placed on electronic monitoring for a
17 violation of Article 7, Title 23.

18 THE COURT: Okay.

19 Do you have a lawyer?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you understand that what they're
22 asking me to do is place you on electronic monitoring for
23 a minimum of ten years?

24 Right? Isn't it ten years?

25 MS. WRIGHT: It is ten years. And I do -- sir,

1 I have a copy of the memo, a written memorandum and
2 proposed order in relation to that.

3 THE COURT: Yeah, I mean, did that apply
4 retroactively? That's been the question that other
5 judges have had. And I've never -- I mean, the ---

6 THE DEFENDANT: I would ---

7 THE COURT: Hold on a minute.

8 The lifetime monitoring, what year was that passed?

9 MS. WRIGHT: 2006.

10 THE COURT: Was it -- was it to apply in cases
11 like this where he's got a '97 or a '99?

12 MS. WRIGHT: Yes, sir, because his charge at
13 the time, which was under the old statute -- I think it's
14 § 16-1-140 -- has been converted over to § 16-3-655. It
15 would be considered a first offense for a CSC first
16 offense on a minor at this stage. And any first-offense
17 CSCs as well as third-offense CSCs automatically trigger
18 the Sex Offender Registry. And the requirements of the
19 Sex Offender Registry which under Article 7, Title 23,
20 include the electronic monitoring.

21 THE COURT: Well, here's the interesting thing
22 for me just having been down there -- and watching these
23 things is like watching sausage be made. If he had never
24 violated his probation, it wouldn't trigger it, would it?

25 MS. WRIGHT: Well, technically he really should

1 have been -- what we're asking you to do today is do a
2 remedial -- issue a remedial order because he really
3 should have been put on the monitoring back in 2012 for
4 that violation.

5 THE COURT: Yeah, when he failed to register?

6 MS. WRIGHT: That's correct. And it was just
7 recently discovered by Agent Metcalf as he was preparing
8 for the administrative hearing on his recent violations
9 when he looked at his criminal history and discovered
10 that he had this other charge which should trigger the
11 electronic monitoring.

12 THE COURT: Did you do a year on the failure to
13 register?

14 THE DEFENDANT: I sure did. And whenever --
15 upon my release and everything, they went through this
16 right here and everything and said that I did not have to
17 have that ---

18 THE COURT: Who told you that?

19 THE DEFENDANT: The prison system before I was
20 even released. If you're released from the Department of
21 Corrections, they have to make sure that you're not going
22 onto a GPS box.

23 THE COURT: And what year was that? 2013,
24 because you would have done a year; right?

25 THE DEFENDANT: Yes. Mainly it was over this

1 case whenever this case happened back in '97. It was a
2 misunderstanding of a person telling lies about how old
3 they are in the first place and everything.

4 THE COURT: What you need is a lawyer. I mean,
5 this is an issue that judges hate. I mean, it's a
6 statute that's passed that, you know, it's so punitive
7 that it's kind of amazing. But there's not a lot of
8 wiggle room here. Why don't you have a lawyer? I mean,
9 I don't -- according to their position, I don't have any
10 choice. I've got to put you on lifetime GPS monitoring.

11 THE DEFENDANT: Basically right now I was in a
12 situation where I really couldn't afford one.

13 THE COURT: Uh-huh (affirmative).

14 THE DEFENDANT: But I'm working -- I do got a
15 job. He keeps saying I don't have a job. But they
16 called from worked and asked for him to speak to my
17 employer, and he won't.

18 THE COURT: Where are you working?

19 THE DEFENDANT: I work for Tony's Express in
20 Powdersville.

21 THE COURT: Doing what?

22 THE DEFENDANT: Detailing cars.

23 THE COURT: Okay. Do you get paid cash?

24 THE DEFENDANT: Daily. Yes, sir.

25 THE COURT: Okay.

1 How much will the monitoring be?

2 MR. METCALF: It will be anywhere around forty
3 to sixty dollars a week.

4 THE COURT: How much do you get paid a day?

5 THE DEFENDANT: Today?

6 THE COURT: How much do you get a day for
7 detailing cars?

8 THE DEFENDANT: Anywhere from -- if it's slow,
9 it's just forty; if we're busy, it can be up to a hundred
10 and fifty.

11 THE COURT: Okay. Well, it would be a minimum
12 of one day a week you'd be paying toward GPS monitoring.

13 THE DEFENDANT: Yeah.

14 THE COURT: All right. Y'all -- you got a copy
15 of that for me?

16 MS. WRIGHT: Yes, Your Honor.

17 THE COURT: I don't want you to have to come
18 back, but I'm going to give him time to get a lawyer. I
19 mean, I hate to do it. But I'll just continue the
20 hearing until -- I mean, this is -- I hate these things.
21 I mean, I know y'all hate them as bad as we do. But he
22 needs a lawyer.

23 Are you going to get a lawyer?

24 THE DEFENDANT: Yeah.

25 THE COURT: Yeah, you'd better. This is set

1 for the 15th.

2 Or is the next one the 15th of December?

3 MS. ALEWINE: That's ---

4 THE COURT: That's not me, is it?

5 MS. ALEWINE: No. It's scheduled for Macaulay.

6 And we don't have anything else yet for January 2015.

7 THE COURT: What I'll do is continue it for
8 thirty days. And then I'll just set up a hearing during
9 general sessions week and do it. Or a common pleas week.
10 I mean, he doesn't have a clue what he's -- what kind of
11 trap his head's in. But I don't want you to have to come
12 back. That's not a fun drive. I'll just accept y'all's
13 -- have you got a memo?

14 MS. WRIGHT: Yes.

15 THE COURT: I mean, you're welcome to come
16 back. But I don't -- you know.

17 MS. WRIGHT: Yes.

18 THE COURT: I mean, y'all's position is it's
19 mandatory and it's retroactive and triggered by a 2012
20 guilty plea for failing to register?

21 MS. WRIGHT: Yes, sir. And that was a second
22 offense on the failure to register.

23 THE COURT: Yeah. Well, I tend to agree with
24 you. I'm not sure I like it, but I tend to agree with
25 you.

1 All right. I'm going to continue it until at least
2 thirty days. You'd better go get you a lawyer today.

3 THE DEFENDANT: I am.

4 THE COURT: And we'll just get together and set
5 it up. You need to have your lawyer contact him as soon
6 as possible.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And then we'll set up another
9 hearing and let him at least put his position on the
10 record in case it's one that needs to go up on appeal,
11 because I know they're looking for one.

12 THE DEFENDANT: Yeah.

13 MR. METCALF: May it please the Court.

14 THE COURT: The problem is you violated a sex
15 offense. I mean, here's the real problem judges have.
16 If you have this offense on you, and you go out and get
17 caught for having an open container, then theoretically
18 that triggers it because it's a violation. You're a lot
19 more clear-cut because you had a violation for failure to
20 register. But you need to at least have the record
21 clear.

22 Yes, sir?

23 MR. METCALF: If it please the Court, Your
24 Honor, are you just continuing this hearing and you're
25 going to do your probation hearing right now, or you want

1 to continue both of the hearings?

2 THE COURT: Continue both of them.

3 MR. METCALF: Okay.

4 THE COURT: But I'm going to take the
5 memorandum. I mean, since I'm going to continue -- since
6 I'm going to be the one to do it, I'll assume that the
7 memorandum is the Department's position.

8 MR. METCALF: Yes, sir.

9 THE COURT: I don't think I have a whole lot of
10 leeway either, but I at least want the record clear on
11 it.

12 Okay.

13 MR. METCALF: Thank you, Your Honor.

14 THE COURT: And as soon as his lawyer ---

15 As soon as you get one, have him contact him. And
16 then y'all get together and tell me when you want to do
17 it, and I'll do it.

18 MR. METCALF: Thank you, Your Honor. How long
19 do you -- you gave him thirty days to get an attorney.

20 THE COURT: No. You've got fifteen days to get
21 a lawyer.

22 THE DEFENDANT: Fifteen days?

23 THE COURT: Yeah. I mean, you need to
24 understand the seriousness of this. If you -- you're
25 looking at lifetime GPS monitoring.

1 THE DEFENDANT: Yeah, I understand that. I
2 already have enough issues with getting employment and
3 everything else because of my record.

4 THE COURT: Well, that's why you need to get a
5 lawyer. All right.

6 MR. METCALF: Thank you, Your Honor.

7 (WHEREUPON, the hearing ended at approximately 11:09
8 a.m.)

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

SHAWN ALLEN MITCHELL,

DEFENDANT.

2012-GS-04-01034

FEBRUARY 27, 2015

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

APPEARANCES:

SCOTT METCALF, AGENT
ON BEHALF OF THE STATE

BRIAN HORROCKS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS.

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **FEBRUARY 27, 2015**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE CLERK: Please raise your right hand. Do
5 you solemnly swear or affirm that the testimony today
6 you give the Court is the truth, the whole truth and
7 nothing but the truth?

8 THE DEFENDANT: Yes, ma'am.

9 MR. HORROCKS: Your Honor, this is somewhat
10 an unusual case.

11 THE COURT: Have we not had one that's not
12 unusual today, Mr. Horrocks?

13 MR. HORROCKS: This one is in particular very
14 unusual. In his case he's here on a probation
15 violation. But additionally, he was found guilty of
16 failure to register second offense in General Sessions
17 Court. I believe the Judge at that hearing did not
18 order the mandatory GPS monitoring at that time.
19 Subsequently he came in last fall and probation asked
20 another Judge to order the GPS monitoring. For him it
21 would be for life. And that Judge told him that --
22 continued the hearing date and told him to get a
23 lawyer. And that didn't happen. And he's in jail now.
24 I was able to meet with him. I have a copy of the
25 Order from that hearing. I got it on Friday. I

1 haven't had too much time -- not on Friday; I'm sorry,
2 on Wednesday. And I've had a couple of days to review
3 it. I think there may be some issues. And ---

4 THE COURT: What Order do you have and what
5 are the issues?

6 MR. HORROCKS: I have a copy here. I believe
7 Judge Maddox told him, you need to get an attorney to
8 represent you with regard to this Order. And ---

9 THE COURT: That is the Order and it's
10 November of last year. It wasn't appealed. That's the
11 Order of the Court. That's the law of the case. And
12 so that's what he's got to do.

13 MR. HORROCKS: Mr. Mitchell was under the
14 understanding that he was supposed to ---

15 THE COURT: I hate that.

16 MR. HORROCKS: --- get a lawyer, but that the
17 Order was signed maybe by accident because I've spoken
18 with Mr. Metcalf. He says that the understanding
19 leaving that hearing was that he needed to get a lawyer
20 to represent him.

21 THE COURT: Let me tell you. There's an
22 Order that's been signed since November of last year.
23 It is now February, what, 26th, 28th?

24 MR. METCALF: 27th.

25 THE COURT: 27th. I'm hitting all around it.

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Bond Hearing

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1 So you're talking about four or five months since.

2 MR. HORROCKS: He's been in jail since
3 October of last year. So I don't know if he knew that
4 this Order had been signed.

5 THE COURT: I'm going to look at these
6 revocations. I have no jurisdiction over anything on
7 that. That's the Order. It's the law of the case. It
8 wasn't appealed. There's nothing I can do. Now, if
9 there's something you can make some belated appeal
10 request for, I don't know.

11 Go ahead. I want you to speak up Mr. Horrocks.
12 Don't back off.

13 MR. HORROCKS: When he pled guilty to failure
14 to register second, he was supposed to be ordered by
15 the Judge to go on electronic monitoring until he was
16 done registering, and that never happened. So he was
17 never on notice that this would be a consequence of his
18 plea. And so, if he was supposed to appeal at that
19 time, he couldn't have because he didn't know about it.
20 I think there may be ---

21 THE COURT: Let me just tell you this. I
22 hear what you're saying. But in the reports that I
23 have before me, I don't see, and I may have overlooked
24 it, I see under Warrant Number W04140040 the issue is
25 that he was absconded. Okay, sir? And he failed to

1 report after August 2nd, 2013. He failed to report
2 arrest or an assault and battery by a mob. Then he had
3 failure to report on January 15th, 2014. Said he's
4 been on supervision eleven times; he knows what's
5 expected. I don't see any allegation about
6 monitorings.

7 Mr. Mitchell, stop.

8 MR. HORROCKS: And I agree with Your Honor

9 ---

10 THE COURT: So what issue -- why is that
11 relevant to today's hearing?

12 MR. HORROCKS: I believe that in 2012 he may
13 have gone forward with the plea unknowingly to what the
14 consequences were.

15 THE COURT: What does that have to do with
16 today's hearing?

17 MR. HORROCKS: Well, I believe I may be able
18 to help him if I can get in contact with the
19 appropriate person at appellate counsel -- appellate
20 defense.

21 THE COURT: Okay.

22 MR. HORROCKS: And in order to do that, I
23 would like that he still be here at the county so I can
24 ---

25 THE COURT: I'm not concerned about that

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Bond Hearing

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1 part. I hear you and I generally comply with you or I
2 generally accede to your request.

3 MR. HORROCKS: Okay.

4 THE COURT: But I'm not going to today.
5 We're going forward.

6 MR. HORROCKS: I just wanted to put it on the
7 record today.

8 THE COURT: I understand that. And I want
9 you to. I want you to stand up when I start giving you
10 a hard time; okay?

11 MR. HORROCKS: Uh-huh (Affirmative).

12 THE COURT: All right. Now, Mr. Mitchell,
13 have you read or had read to you the report of your
14 alleged probation violation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand why you're here?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you agree or disagree that you
19 wilfully violated the terms of your probation?

20 THE DEFENDANT: Yes, sir, I did violate my
21 probation by not reporting after the fact that I
22 thought that I already had a warrant put on me because
23 I didn't retain a lawyer within fifteen days. I never
24 actually absconded. What happened was I thought that I
25 was already wanted. He come by the motel where we was

1 living and my old lady had told him that I wasn't
2 standing there no more. But at the time I still was
3 there. I wasn't there that day because I was out
4 trying to make some money. And she was scared that I
5 already had warrants, so she told him that I wasn't
6 there.

7 My probation, I did two years probation. That was
8 extended on to PTUP because I didn't pay the money
9 because I didn't have employment. And I never -- the
10 only violations I got is I failed drug tests while I
11 was on probation. And you said something about assault
12 felony, I've never had one of those.

13 THE CLERK: Your Honor, this is Mr. Pevarnick
14 before you.

15 MR. METCALF: This is Shawn Allen Mitchell.
16 I think you've got the wrong Mr. Mitchell.

17 THE COURT: Okay. Just one second. I
18 apologize.

19 MR. METCALF: I didn't want to interrupt you.

20 THE COURT: No, no, I want you to ... I
21 don't think I saw another Mitchell in here.

22 (WHEREUPON, off record discussions were held.)

23 THE COURT: Okay. You're Shawn Allen
24 Mitchell?

25 THE DEFENDANT: Yes, sir.

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Bond Hearing

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1 THE COURT: All right. Mr. Horrocks, there
2 are numerous grounds for this violation. I am not
3 going to consider it. I will continue this hearing on
4 the ground of his failure to have an attorney as
5 ordered by Judge Maddox at the November 17th, 2014
6 hearing and any associated or related issues to that.
7 I am going forward today on the remaining issues.
8 Okay; sir?

9 MR. HORROCKS: Thank you.

10 THE COURT: All right. Now, Mr. Mitchell,
11 let's start over again. You're Shawn Allen Mitchell?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you've had read to you or
14 you've read the violation report in your case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Let's go over it this way. The
17 first report, besides you being here, you've been
18 violated, at least, September 5th, 2014, July 3rd, '14,
19 May 16th, '14, January 13th, '14, September 3rd, 2013,
20 August 12th, '13, June 18, '13, March 28, '14, and
21 January 24, '13.

22 THE DEFENDANT: For failing drug tests; yes,
23 sir.

24 THE COURT: Right. In this report it says
25 you failed to refrain from using controlled substances

1 and you tested positive for cocaine in October. Do you
2 agree or disagree?

3 THE DEFENDANT: I agree.

4 THE COURT: Okay, sir. You haven't paid
5 toward your supervision fee. Do you agree or disagree?

6 THE DEFENDANT: I agree.

7 THE COURT: Have you worked at any gainful
8 employment?

9 THE DEFENDANT: No, sir. I just have got a
10 job. I hadn't even been on it two weeks before I got
11 incarcerated this time. And I turned myself in because
12 I want to get everything straight. I done good -- I've
13 done two years probation. He extended my probation and
14 PTUP'd before for not paying the money and everything.
15 And I was acting stupid and allowing drugs to let me do
16 things I didn't need to do. My last recommendation ---

17 THE COURT: Hang on. I'm going to let you
18 have your chance. Hang on. I want to go through this.
19 Has he paid any money towards his fine?

20 MR. METCALF: It's on the violation report;
21 yeah.

22 THE COURT: In arrears fifty-two dollars. Is
23 that it? He's only in arrears fifty-two dollars on his
24 fine, according to this report?

25 MR. METCALF: Yes, sir.

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Bond Hearing

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1 THE COURT: In one report it says he failed
2 to provide his residence. In other words, where his
3 address was; is that correct?

4 MR. METCALF: What we're required to do is in
5 cases we are required to do some kind of home visit
6 progress report.

7 THE COURT: I'm just asking the question,
8 guys. And what I'm trying -- condition number ten,
9 failing to follow advice and instructions of the agent
10 in that he failed to provide a residence in Anderson.
11 What do you mean by that?

12 MR. METCALF: He was residing in Pickens
13 County. To better able to supervise his case, we asked
14 that ---

15 THE COURT: Mr. Mitchell, did you, in fact,
16 live in Pickens County?

17 THE DEFENDANT: I've been living in Pickens
18 County for over a year. They come to my house and did
19 home visits there. And I ---

20 THE COURT: I don't -- I'm going to give you
21 an opportunity; okay, sir?

22 THE DEFENDANT: Okay. I'm sorry.

23 THE COURT: I'm going to let you, Mr.
24 Mitchell, explain. I just want to hear you.

25 Also, it says that you failed to report on

1 November the 19th, 2014 and November 26th and has not
2 reported since November the 12th. Is that correct?

3 THE DEFENDANT: That is correct, sir.

4 THE COURT: Okay. You weren't home on the
5 13th and 14th of November, 2014 for a home visit; is
6 that correct?

7 THE DEFENDANT: I was not at home. I was on
8 a job them two days. I actually was.

9 THE COURT: You failed to -- you changed
10 residence without getting permission; is that correct?
11 Do you agree or disagree?

12 THE DEFENDANT: When I moved to Pickens ---

13 THE COURT: Agree or disagree?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, Mr. Mitchell,
16 I'm going to give you a chance, or Mr. Horrocks, your
17 attorney, to explain it to me. I'll start with Mr.
18 Horrocks.

19 MR. HORROCKS: I've had several opportunities
20 to meet with Mr. Mitchell. And as we talked, I believe
21 he has a drug addiction and that's where he's going
22 wrong. If there is an alternative to ATU, I would ask
23 that you consider that, because I've addressed this
24 issue with legal counsel for the Department of
25 Corrections and it is unclear to me what the minimum

1 amount of time you would have to revoke is for an ATU

2

3 ---

4 THE COURT: I don't know either. I hear that
5 if you're not there for at least two years, getting
6 into ATU is not going to happen. I don't know that ---

7 MR. HORROCKS: The issue, I believe, is
8 there's a screening process and then ATU is six to nine
9 months. And so you never know if they will be admitted
10 or if there's a wait list to get into ATU. And so I
11 would ask if you do revoke some time that he be held --
12 instead of ATU that he be held afterwards for inpatient
13 drug treatment.

14 THE COURT: All right. Mr. Mitchell, now
15 it's your time to speak if you would like to.

16 THE DEFENDANT: Yeah, I would like to. My
17 first time that I come up here in Court the probation
18 officer was recommending me to stay in jail until bed
19 space opened for Morris Village and that I be put on
20 the bracelet. And if that recommendation was still
21 available I would be more than willing to do that
22 because it would help me since I do need the treatment.

23 THE COURT: How long ago has that been?

24 THE DEFENDANT: November when I was told by
25 the Judge that I needed to get a paid lawyer.

1 THE COURT: Anything else you want to add?

2 THE DEFENDANT: I just want to make my life
3 right.

4 THE COURT: How long has he been in jail, Mr.
5 Horrocks?

6 MR. HORROCKS: I was thinking twenty-seven.

7 THE COURT: Twenty-seven? All right. I'm
8 going to find that Mr. Mitchell has violated the terms
9 and conditions of his probation and that he's tested
10 positive for drugs. He's failed to pay his fine or
11 fees and he has not reported on November 19, 26, or
12 since November 12th, 2014. He wasn't home for a home
13 visit.

14 I'm going to revoke a year. I'm going to stay or
15 toll, excuse me, his probation while he's incarcerated.
16 I'm going to extend his probation for a period of
17 fifteen months. Or a year. Let's do a year.

18 Any restructure fees. This was not in
19 consideration of the issues surrounding Judge Maddox's
20 Order of November 17, 2014, or actually dated November
21 18, '14. Mr. Horrocks can pursue that and so can the
22 department in any manner they think appropriate.

23 Good luck to you.

24

25 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF ANDERSON)

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 vs.)

TRANSCRIPT OF RECORD
2012-GS-04-01034

7 SHAWN ALLEN MITCHELL)

8 DEFENDANT.)

9
10 JULY 13, 2015
11 ANDERSON, SOUTH CAROLINA
12
13

14 B E F O R E:

15 THE HONORABLE J. CORDELL MADDOX, JUDGE.
16
17

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

19 OCTAVIA Y. WRIGHT
20 MATTHEW SCOTT METCALF
DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES
REPRESENTATIVES FOR THE STATE

21 BRIAN T. HORROCKS, ASST. PUBLIC DEFENDER
22 ATTORNEY FOR THE DEFENDANT
23
24

25 Vivian Cross
Official Court Reporter

1 JULY 13, 2015

2 (WHEREUPON, court convened with all parties present
3 when the following proceedings were had:)

4 THE COURT: All right. This is a GPS monitoring
5 issue. Is that right?

6 MS. WRIGHT: Yes, sir.

7 THE COURT: How you doing?

8 MS. WRIGHT: Doing well, how are you, sir? I hope
9 your hand feels good.

10 THE COURT: It doesn't and you-all are making it
11 feel worse. But that's okay. What we got?

12 MS. WRIGHT: Well, Your Honor, I was last here back
13 in November of 2014 to represent the state in asking you
14 to order that Mr. Mitchell be placed on GPS monitoring as
15 a result of his second offense of a failure to register
16 violation.

17 THE COURT: Right.

18 MS. WRIGHT: That was also done in conjunction with
19 a probation violation hearing at that time. At that time
20 you ordered Mr. Mitchell to obtain counsel. I think you
21 gave him 15 days to do so. Unfortunately, at the end of
22 that hearing Mr. Mitchell absconded supervision. And he
23 went before -- I think it was Judge McIntosh in February.
24 Judge McIntosh decided to revoke him for a year, tolled
25 his probation for a year, and then extend it when he was

1 released I think in August of this year.

2 Since that time I recently received in June,
3 approximately June 1st, from assistant public defender
4 Brian Horrocks here, a motion to quash an order that you
5 had signed. I think it was the next day, November the
6 18th, the date after the hearing. I had presented to
7 you a proposed order asking you to order him put on GPS.
8 And you went ahead and signed that the next day. And he
9 filed a motion to quash that order, saying that he did
10 not have the opportunity to come back for another hearing
11 within the 15 days as you had ordered.

12 I since filed a memorandum in opposition to that
13 order detailing the arguments why, you know, mainly it's
14 beyond ten days from the last hearing in violation of
15 Rule 29, Rules of Criminal Procedure. And I also
16 presented the Court with another proposed order to not
17 dismiss the order that you already signed. And we're
18 here today.

19 He has recently, when I say "he," I'm talking about
20 attorney Horrocks, has recently submitted a memo in
21 opposition to the order imposing the lifetime GPS that we
22 received July 8, or thereabouts. And so we're here
23 today, I guess to make the legal argument on the issue.
24 But I would first, again, ask the Court to simply just
25 dismiss the defendant's motion to quash, the original

1 order that you signed back on November 18th for the
2 reasons that were outlined in the memorandum in
3 opposition that was sent to the Court. The party, his
4 attorney, has a copy of it; I believe you have a copy of
5 it, and the proposed order that was submitted that
6 outlines the Department's position on that.

7 If I could, Your Honor, I would just like to stress,
8 since recently receiving the attorney Horrocks'
9 memorandum in opposition, I would like to go ahead and
10 address some of his arguments in that if I could?

11 THE COURT: Sure.

12 MS. WRIGHT: Okay. The first couple of things that
13 he mentions is that he argues that this Court has no
14 longer jurisdiction. He attempts to reverse the argument
15 that I had made in regards to the application of Rule 29,
16 given the ten days since the last hearing. He is, in his
17 first couple of arguments, he's saying that the state's
18 position to require Mr. Mitchell be put on GPS is
19 actually amending the sentence of his failure to register
20 charge.

21 You can correct me if I'm wrong, attorney Horrocks;
22 but he's attempting to say that we're trying to amend the
23 actual failure to register sentence, which that sentence
24 was done by I think a magistrate back in 2012. And the
25 state's -- go ahead.

1 MR. HORROCKS: That sentence was in a general
2 sessions court.

3 MS. WRIGHT: Oh, okay.

4 MR. HORROCKS: Failure to register, second offense.

5 THE COURT: Okay. But the requirement or the law
6 that allows me to add that, is an addendum to his
7 violation, right?

8 MS. WRIGHT: Yes, sir. And actually I would state
9 that despite the fact of when the sentencing of the
10 failure to register charge occurred, that the GPS statute
11 is a mandatory statute that operates outside of the
12 bounds of when a sentencing charge occurs. It
13 automatically takes effect. And it's really contingent
14 upon the sex-offender-registry statute in this case for
15 him because the offense was committed prior to the GPS
16 statute, also known as what we call Jesse's law, in 2006.
17 However, at the time that he got released, I think it was
18 in 2000 for his lewd act charge, the registry was in
19 place, since then the registry was in place.

20 THE COURT: And that's when he didn't register for
21 the second time?

22 MS. WRIGHT: Well, not in 2000. I think it was --

23 THE COURT: Right. It was post that?

24 MS. WRIGHT: Yes.

25 THE COURT: It was post Jessica's law?

1 MS. WRIGHT: I'm sorry?

2 THE COURT: It was --

3 MR. HORROCKS: Correct.

4 MS. WRIGHT: Okay.

5 THE COURT: Well, let me save some time. I
6 understand why you're making these arguments. But it
7 sounds to me like clearly there's a requirement under
8 that law that --

9 MR. HORROCKS: There is a requirement, Your Honor,
10 and I believe semantically the difference between what
11 probation is saying and what I'm saying is, it was a
12 requirement in 2012 when he pled guilty that that judge,
13 that Court, was ordered to order the GPS monitoring. He
14 is not being supervised on that charge for failure to
15 register. So he served a year-long sentence and then was
16 released from prison on those charges.

17 Probation back in November of last year brought this
18 issue before the Court kind of under the guise of a
19 probation violation because he has an additional
20 probation case. So when it was brought before the Court,
21 and it was not brought under the indictment number for
22 the failure to register; it was brought under an
23 indictment --

24 THE COURT: I got you.

25 MR. HORROCKS: -- for probation case.

1 THE COURT: In other words, when he pled to the
2 second violation, your position is at that time they
3 should have added lifetime monitoring?

4 MR. HORROCKS: Correct. For example, if the Court
5 would have sentenced him to two years in prison instead
6 of the mandatory maximum of 366, he would have had ten
7 days to appeal and, you know, object to that sentence.
8 Had he not done that, he would be entitled to no relief
9 because he missed the ten-day deadline that's imposed by
10 the rules of court. The same should apply in a case
11 where the state wants to come and add a condition to his
12 sentence. If they do that 914 days after the sentencing
13 date, they have missed the opportunity to do that.

14 And my other argument is that probation, because
15 this was a failure to register and not a probation
16 violation, probation is not the proper party to be
17 bringing this issue before the Court in the first place.
18 Kristin Reeves, who was the solicitor on the case,
19 actually would be the party with standing to argue this
20 before the Court and take it to appeal.

21 THE COURT: Okay. I see where we are. You-all come
22 back here a minute.

23 (Whereupon, the hearing is adjourned to chambers.

24 No further testimony is placed on the record.)

25 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

5/12
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

-vs-

Shawn Alan Mitchell,
Defendant.

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

MOTION TO QUASH

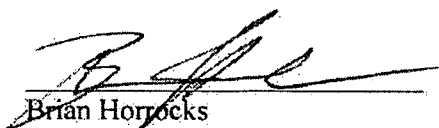
Indictment #: 2012-GS-04-01034

YOU WILL HEREBY TAKE NOTICE that the above named defendant through his undersigned attorney will move before the Court as soon as this matter can be heard upon the following motion:

THE DEFENSE MOVES TO QUASH the order imposing lifetime active electronic monitoring on the defendant (*see* attached order). The defendant appeared before Judge Maddox on 11/17/2014 and was granted 15 days to obtain legal representation to dispute the order (*see* attached transcript, pg. 12 lines 14-20). The order was then signed the next day, 11/18/2014, before a hearing could be held regarding the matter. Considering the language in the transcript, and because the order was signed the next day, it appears the order was likely signed inadvertently.

WHEREFORE the defense requests a hearing on this matter and that the Court issue an order to quash.

Respectfully Submitted,


Brian Horrocks
Assistant Public Defender

Anderson, South Carolina

May 28 2015

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ANDERSON SC
2015 MAY 28 PM 1:32
COMMON PLEAS AND
GENERAL SESSIONS

6/12
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 STATE OF SOUTH CAROLINA ANDERSON SC IN THE COURT OF GENERAL SESSIONS
 COUNTY OF ANDERSON 2015 JUN -8 11:27 TENTH JUDICIAL CIRCUIT

Indictment #: 2012-GS-04-01034

THE STATE

COMMON PLEAS AND
 GENERAL SESSIONS

v.

**MEMORANDUM IN OPPOSITION TO
 DEFENDANT'S MOTION TO QUASH**

SHAWN ALAN MITCHELL,

Defendant.

COMES NOW the Department of Probation, Parole and Pardon Services (hereinafter, the Department), by and through its counsel, responds to the Defendant's Motion to Quash.

STATEMENT OF FACTS

On November 5, 1997, the Defendant pled guilty to one count of Lewd Act upon a Child under the age of sixteen. The Honorable H. Dean Hall sentenced him to five years of incarceration. As a result of this conviction, the Defendant was placed on the Sex Offender Registry pursuant to S.C. Code §23-3-430. On May 15, 2001, the Defendant pled guilty to two counts of Sex Offender Registry violation charges in Anderson County General Sessions Court pursuant to SC Code §23-3-470(B)(1) found in Article 7 of Title 23. The Honorable James W. Johnson, Jr. sentenced him to ninety days.

On May 17, 2012, the Defendant pled guilty to one count of Sex Offender Registry Violation, fail to register – 2nd offense and two counts of Grand Larceny, value more than \$2,000 but less than \$10,000. The Honorable R. Lawton McIntosh respectively sentenced him to 366 days and five years suspended to 366 days and two years of probation to run concurrently.

On November 17, 2014, the Defendant appeared before the Honorable J. Cordell Maddox for a probation violation and GPS hearing. The Defendant represented himself at this hearing. The Department was represented by the undersigned counsel and Agent Scott Metcalf. Judge

Maddox did grant the Defendant fifteen days to obtain legal representation to dispute the statutory mandate that he be placed on GPS. The Defendant failed to obtain an attorney within the fifteen day requirement per Judge Maddox's instructions (see the transcript, p. 12 lines 14-20). Despite that fact, Judge Maddox did sign a Proposed Order that was given to him that day on November 18, 2014. This Order requires the Defendant to be monitored with an electronic monitoring device (or GPS) as required pursuant to SC Code §23-3-540(E). Within the following days after this hearing, the Defendant absconded and warrants for his arrest were issued by the Department for and the Pickens County Sheriff's Office for violations and failing to register, respectively.

On February 27, 2015, the Defendant appeared before the Honorable R. Lawton McIntosh for a probation violation hearing. The Defendant was represented at this hearing by Assistant Public Defender Brian Horrocks. The Department was represented by Agent Scott Metcalf. Judge McIntosh revoked the Defendant's probation for one year, tolled his probation while incarcerated, extended his probation by one year, and restructured his fines and noted that the time he serves will satisfy his supervision fee arrearage. See the attached Order.

On the afternoon of Monday, June 1, 2015, the Department received via U.S. Mail the Defendant's Motion to Quash. Within the context of this recent pleading, the Defense Counsel has raised the issue of whether a hearing should be held on this matter to determine if the Order signed by Judge Maddox on November 18, 2014 should be quashed before another hearing could be held on this matter after the Defendant failed to obtain legal representation within fifteen days as instructed by Judge Maddox.

MEMORANDUM

Untimeliness of Defendant's Motion

Pursuant to Rule 29(a) of the SC Criminal Rules of Procedure and Rule 59(b) of the South Carolina Civil Rules of Procedure, the Department respectfully request that the Defendant's Motion be dismissed as it has been presented well beyond the ten (10) day requirement after the Court's last hearing on this matter on November 17, 2014. See State v. Wise, 2014 WL 2753682 (S.C. App.) where the court affirmed a circuit judge's ruling to not consider a post-trial motion due to lack of jurisdiction because the motion had not been made within ten (10) days of sentencing and in accordance with Rule 29(a), SCRCrimP.

Defendant's own negligence and inexcusable delay resulted in harmless error

Even assuming *arguendo* that this Court could hear this matter, the fact that the Defendant did not comply with Judge Maddox's instructions has made the issue of the need to have another hearing in order to contest the GPS statutory mandates null and void. The record makes clear that Judge Maddox agreed with the legal arguments that the Department had made regarding the GPS statutory mandates (see transcript, p. p. 8 line 10, p. 10 lines 23-25). Thus, there is nothing in the record to presume that the signing of the Order on November 18, 2014 would've affected the court's ultimate result especially when the Defendant failed to adhere to the judge's instructions to obtain counsel. "...Under the doctrine of harmless error, we will affirm the circuit court's judgment when we can conclude that the error at issue could not have affected the court's result," Virginia Retirement System v. Cirillo, 54 Va.App. 193, 676 S.E.2d 368, 373 (2009).

In addition, the defendant had a fair hearing and he has not presented any evidence of any harm done as a result of the Order. Instead, the Defendant simply makes a statement without developing the argument or stating any authority to support his assertions. "When it plainly

appears that substantial justice has been reached, no judgement shall be ...reversed . . . [f]or any other defect, imperfection, or omission in the record, or for any error committed.” Montgomery v. Commonwealth, 56 Va. App. 695, 696 S.E.2d 261, 264 (2010).

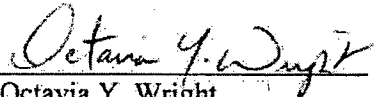
In the current matter, the Defendant is attempting to circumvent the statutory mandates of the GPS statute as outlined in the record (See transcript, p. 5 lines 7-17) via a mere harmless error regarding the date of a signed order despite the fact that he did not follow the court's instructions. As such, his motion violates the doctrine of unclean hands in the sense that he now asks this court for relief nearly six months after the last hearing on this issue. Instead, he absconded his supervision and is now incarcerated. In addition, it would be highly prejudicial to the Department to allow the Defendant's motion to proceed given the fact that he has presented no reason for his delay. “[I]t is ... well settled that laches ‘applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party.’” Moguel v. State, 184 Md.App. 465, 966 A.2d 963, 969 (2009). As such, the Defendant waived his rights for review of the Order. Thus, his case is moot and should be dismissed accordingly as outlined herein.

CONCLUSION

Mr. Mitchell pled guilty to one count of Sex Offender Registry Violation, fail to register – 2nd offense and two counts of Grand Larceny, value more than \$2,000 but less than \$10,000. He was sentenced to 366 days and five years suspended to 366 days and two years of probation to run concurrently. The Defendant was given fifteen days to obtain counsel at a probation violation hearing on November 17, 2014. After this hearing, the Defendant absconded his supervision and continued to fail to register. As a result of his failure to adhere to the instructions of this Court and the conditions of his probation, he is currently incarcerated.

Therefore, the Department respectfully requests a Dismissal of the Defendant's Motion to Quash for all of the reasons addressed herein.

Respectfully Submitted,


Octavia Y. Wright
Legal Counsel
South Carolina Department of Probation,
Parole & Pardon Services
2221 Devine Street
Columbia, SC 29250

June 4, 2015

Shawn Alan Mitchell,
Defendant.

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

MEMORANDUM IN OPPOSITION TO
ORDER IMPOSING LIFETIME
ELECTRONIC MONITORING

FILED-CLERK'S OFFICE
ANDERSON, SC

2011-01-01

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NOW COMES the above named Defendant, through his undersigned attorney, in response to the Department of Probation, Parole and Pardon Services' (the Department) motion imposing lifetime electronic monitoring.

On November 17, 2014, the Department appeared before the Honorable J. Cordell Maddox and asked this Court to sign an order imposing lifetime GPS monitoring on the Defendant because he was convicted of Failure to Register – Second Offense on May 17, 2012. Judge Maddox ordered the Defendant to obtain legal counsel in 15 days so that a hearing could be held on the matter. The proposed order was signed the next day on November 18, 2014. The defense now argues that: 1. the Court no longer had jurisdiction to amend the sentence; 2. the State missed its opportunity to appeal the sentence; 3. the Department lacks standing to address this issue with the Court; and 4. S.C. Code Section §23-3-540 is unconstitutional.

1. JURISDICTION

In its memorandum, the Department cites State v. Wise, 2014 WL 2753682 (S.C. App 2014) and alleges that the Defendant's motion to quash is untimely. The Department's citation.

of the law is accurate, but when applied in this case, bars the Court from even hearing this matter in the first place. The court in *Wise* held that if a motion is not made within ten days of sentencing, the court will be without jurisdiction to entertain the motion. After Defendant's plea on May 17, 2012, the Solicitor's Office (the State) did not file any sort of post-trial motion for resentencing. This matter was brought before the Court by the Department on November 17, 2014 (914 days after sentencing), well beyond the ten-day requirement set out in Rule 29 (a) SCRCrimP. Because the term of court has expired and no timely post-trial motion was made by either party, the Court no longer has jurisdiction to amend the Defendant's sentence in this case.

2. APPEAL

The Department then cites *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (2010) as justification for retroactively amending the sentence imposed by the Court. *Boggs* can be distinguished from the case at hand in several ways, but most importantly *Boggs* was heard by the Court of Appeals after the appellant filed a timely appeal pursuant to Rule 203(b)(2) SCACR. Rule 203(b)(2) SCACR requires that notice of appeal from the court of General Sessions be filed by a party within ten days of sentencing. Had the appellant in *Boggs* failed to file an appeal within ten days, he would not have been entitled to relief of any kind.

In this case, on May 17, 2012, after the Defendant's plea, the State did not object to the Court's sentence and did not serve notice of appeal. Even if the State had served timely notice of appeal, it would not have been entitled to any relief on appeal because it failed to object at the time of sentencing. In *State v. Shumate*, 276 S.C. 46, 275 S.E.2d 288 (1981) the court held that the appellant's "failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal." In the absence of a

timely post-trial motion or objection in court at the time of sentencing, the State has no legal recourse to seek relief as an aggrieved party.

3. STANDING

Rule 201(b) SCACR provides that "only a party aggrieved" by a sentence may appeal. The Department is not a party to this case and was not a party to this case at the time of sentencing and therefore lacks standing to bring this issue before the Court. The two parties to this case were the State (represented by the Tenth Circuit Solicitor's Office) and the Defendant (represented by counsel).

There is an important distinction between the ordering of GPS monitoring under S.C. Code §23-3-540(E) and §23-3-540(C). The Defendant was sentenced pursuant to his guilty plea to Failure to Register - Second Offense under S.C. Code §23-3-470(A). Violation of §23-3-470(A) by certain persons triggers the application of §23-3-540(E) which requires "the court" to order the offender to be placed on GPS monitoring. §23-3-540(C), deals only with probation violations and explicitly states that *either* "the court" or an "agency with jurisdiction" may order GPS monitoring. The lack of the language "agency with jurisdiction" in section (E) shows clear legislative intent to require that the imposition of lifetime monitoring under section (E) be imposed by the sentencing court. §23-3-540(E) is ambiguous as to the timeline of when the court must order GPS monitoring, but taking into account general sentencing procedure, it is assumed that the intent of §23-3-540(E) was to require *the court* to order monitoring for certain persons *upon conviction* of violation §23-3-470(A). As per the rule of lenity, any ambiguity in

the statutory language should be interpreted in favor of the Defendant. See U.S. v. Santos, 533 U.S. 507 (2008).¹

Beyond legislative intent, there is some case law that seems to indicate how courts should handle proposed amendments to sentencing by the Department after the term of court has expired. The South Carolina Supreme Court in State v. Davis, 375 S.C. 12, 649 S.E.2d 178 (2007), held that a judge at a probation violation hearing could not order that a defendant be put on the sex offender registry when it was not part of the original plea for the underlying offense for which he was on probation. Similarly, mandatory GPS monitoring under §23-3-540(E) is required of the court at the time of sentencing and should not be imposed at a later date by a judge at an unrelated probation violation hearing. In this case, Defendant has long since completed the sentence imposed by the court in 2012. He is not on probation for the charge that the Department wants to address and the matter was brought before the Court at an unrelated probation hearing.

A comprehensive reading of S.C. Code §23-3-540 suggests that the Department would only be considered a party to this matter if it stemmed from a violation of probation addressed under §23-3-540(C). The Department is not a party to this case because this was a conviction for Failure to Register, the punishment for which is addressed §23-3-540(E) not (C).

4. CONSTITUTIONALITY

Requiring the Defendant to submit to GPS monitoring for the rest of his life under S.C. Code §23-3-540 violates his substantive due process rights as provided in The Fourteenth

¹ "The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them." U.S. v. Santos, 533 U.S. 507 at 514

Amendment to the United States Constitution, U.S. Const. amend. XIV, because the statute is not narrowly tailored. The Defendant has the right to be free from the permanent, continuous tracking of his movements, and should not be deprived of that right without due process of law. S.C. Code §23-3-540(E) mandates lifetime GPS monitoring without any consideration of the Defendant's likelihood of reoffending.

The court in In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013), held that "section 23-3-540 is a civil remedy... [and] the practical effects of the remedy are non-punitive." And held that when imposing lifetime GPS monitoring, it was unnecessary for the courts determine whether an offender was likely to reoffend. The court in *In re Justin B.* failed to acknowledge important details regarding the actual practical application of the statute and the imposition of lifetime GPS monitoring. Although the legislative intent behind the statute may not have been punitive, application of the restrictions and penalties in the statute are clearly punitive. Persons who are monitored as per §23-3-540 are deprived of their property in the form of mandatory costs and are deprived of their freedom to move while their monitoring devices are charging. Their movements and locations are monitored at all times. The statute also imposes severe criminal penalties for falling behind on monitoring dues and subjects offenders to the cruel and unusual punishment of a life of imprisonment for being poor, in violation of The Eighth Amendment of the United States Constitution, U.S. Const. amend VIII.

Once convicted and monitored under §23-3-540, persons classified as sex offenders are required to pay the fees and costs associated with the monitoring. *See* S.C. Code §23-3-540(K). Currently those costs are approximately \$60 per week. Over a ten-year period, the costs amount to a total of \$31,200. This does not include other collateral costs to the person being monitored such as interference with employment, electricity bills, monitor replacement costs, clothing

restrictions, physical discomfort, and social discomfort.

Generally, GPS ankle monitors are battery powered and take approximately one hour to charge. The person being monitored must charge the device one or more times every day. The device and the person being monitored must remain stationary during charging. Assuming the person spends two hours a day charging the device, over a ten-year period the person will spend 7300 hours (over 300 days) sitting stationary while the device charged. If the person fails to completely charge the battery, the Department is alerted and may arrest the person being monitored for violation of electronic monitoring under S.C. Code §23-3-545, a class E felony with a maximum penalty of ten-years in prison.

If a person being monitored finds himself homeless or unemployed, he will likely be charged with violation of electronic monitoring under S.C. Code §23-3-545 unless he can remedy his situation. Many offenders struggle to find employment because of the restrictions regarding where they are allowed to work, the limitations imposed by the GPS monitor, and the stigma attached to them by their criminal record. Low-level positions in fast food and retail are often off limits for persons classified as sex offenders. Employment opportunities may be unavailable based on the workplace's proximity to other establishments or buildings.

Housing is another issue for sex offenders because of strict statutory and Department policy restrictions. There are a limited number of geographical regions where persons classified as sex offenders may live. These restrictions affect the amount of rent a person pays, a person's commute to work, the quality of community in which the person lives, and the person's ability to move to a different living situation if circumstances change. A person may not be able to live with family members if the household does not meet statutory requirements. Should a person who is monitored by GPS become homeless, he may not have a way to charge the monitoring

device and as a result may be charged under S.C. Code §23-3-545. If he is homeless and cannot afford to pay rent, it is likely he cannot afford to pay \$60 per week for the GPS monitoring and may be charged separately for that under §23-3-545 and §23-3-540(K).

To its credit, the legislature did include language in S.C. Code §23-3-540(K) which gives the Department the ability to exempt the payment of the costs of GPS monitoring if it determines exceptional circumstances exist and cause severe hardship to the person. Section (K) reads:

The person must be charged for the cost of the active electronic monitoring device and the operation of the active electronic monitoring device for the duration of the time the person is required to be electronically monitored. The Department of Probation, Parole and Pardon Services may exempt a person from the payment of a part or all of the cost during a part or all of the duration of the time the person is required to be electronically monitored, if the Department of Probation, Parole and Pardon Services determines that exceptional circumstances exist such that these payments cause a severe hardship to the person. The payment of the cost must be a condition of supervision of the person and a delinquency of two months or more in making payments may operate as a violation of a term or condition of the electronic monitoring. All fees generated by this subsection must be retained by the Department of Probation, Parole and Pardon Services, carried forward, and applied to support the active electronic monitoring of sex offenders.

However, even if the Department determines there are extraordinary circumstances which cause severe hardship to the person being monitored, the statute gives the Department discretion to decide whether it will exempt the costs or arrest the person for violation of electronic monitoring. Therefore, under §23-3-540(K), the Department may lawfully arrest a person who physically could not meet the requirements of the law and the state may seek to convict that person.

Together, S.C. Code sections 23-3-540 and 23-3-545 have created a life-long revolving door into a sort of debtor's prison for persons required to be monitored for life who cannot afford the costs. It becomes, for many, an indefinite probationary period with a suspended life sentence that can be revoked ten years at a time. A person who is struggling to make payments can be

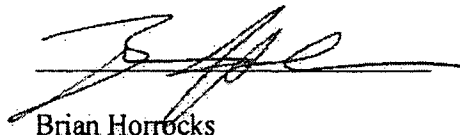
arrested every two months for failure to pay the costs associated with GPS monitoring, even if his struggle was legitimate. If he is found guilty, he can be imprisoned for up to ten years. Upon release from prison, the Department can charge him again after two months if he has failed to find housing and employment and this process may repeat until the end of his life. A person who was not sentenced to life in prison and is unlikely to reoffend, may spend the majority of the rest of his life in prison because he cannot stop being poor.

S.C. Code §23-3-540 is not narrowly tailored. Because GPS monitoring is imposed under section (E) without any review of the person's likelihood to reoffend, the statute violates The Fourteenth Amendment to the United States Constitution which states that "[no] state shall... deprive any person of life, liberty, or property without due process of law."

CONCLUSION

For the above stated reasons, the Court should not impose lifetime GPS monitoring on the Defendant. The Court should dismiss this matter and quash the order signed November 18, 2014.

Respectfully Submitted,



Brian Horrocks

Assistant Public Defender

Anderson, South Carolina

July 8, 2015

sm

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

THE STATE)

Plaintiff,)

v.)

SHAWN ALAN MITCHELL)

Defendant.)

IN THE COURT OF GENERAL
SESSIONS
TENTH JUDICIAL CIRCUIT

ORDER



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

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

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

It is so ordered.

Date

11/18/14

[Signature]
Presiding Judge
Tenth Judicial Circuit

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ANDERSON COUNTY
2014 NOV 19 10:26
COMMON PLEAS AND
GENERAL SESSIONS

TRUE COPY
NOV 19 2014

[Signature]
CLERK OF COURT

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ANDERSON SC
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
APR 11 2016 3:27 PM

THE STATE)
COMMON PLEAS AND)
GENERAL SESSIONS) Indictment #: 2012-GS-04-01034
v.)
SHAWN ALAN MITCHELL,)
Defendant.)

ORDER A TRUE COPY

MAR - 3 2016

Richard A. Kiley
ANDERSON CLERK OF COURT

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

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

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

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

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

It is so ordered.

3/2/16
Date

COMMON PLEAS AND
GENERAL SESSIONS

MAR 3 - 3 PM 2016

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ANDERSON SC

J. Cordell Madson
The Honorable J. Cordell Madson

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MAR - 3 2016

Richard D. Kiley
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

53

COUNTY OF Anderson
 STATE VS.
Shawn Alan Mitchell

AKA:

Race: W Sex: M Age: 35DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC01023218*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

in violation of § 16-13-30(B)of the S.C. Code of Laws, bearing CDR Code # 3420☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The 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.

ATTEST:

Reeves, Kristin W.69673
SC Bar#DefendantAttorney for Defendant530
SC Bar#

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 5 yearsand/or to pay a fine of \$ 366; provided that upon the service of366 days/months/years and/or paymentof \$ 2; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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☐ 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: \$ 100.00 plus 20% fee: \$ 20.00

Payment Terms:

☐ Set by SCDPPPS5 days/hours Public Service EmploymentObtain 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 FundOther: **A TRUE COPY**

APR 14 2016

Richard S. Miller
ANDERSON CLERK OF COURT

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

Presiding Judge

Judge Code: Sentence Date: 5-17-16

Clerk of Court/ Deputy Clerk

Court Reporter: B. Tollison

JCCA/217 (03/2011)

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 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
§ 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
3% to County (if paid in installment)	\$
TOTAL	\$ <u>100.00</u>

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Larceny/Grand Larceny, value more than \$2,000 but less than \$10,000

That Shawn Alan Mitchell did in Anderson County, on or about June 14, 2011, feloniously take and carry away the personal property of New Life Christian Center, to wit: a commercial Trane 10-ton air conditioning unit, with a total value of more than Two Thousand Dollars but less than Ten Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of 16-13-30 of the South Carolina Code of Laws (1976) as amended.

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APR 14 2016

Richard A. Hilder
ANDERSON CLERK OF COURT

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

V. E. R.
ASSISTANT SOLLICITOR

WITNESSES

L Holden, Anderson County Sheriff's Dept.

ARREST WARRANT NUMBER

J894741

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS04 - 01034

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

Term

THE STATE

vs.

Shawn Alan Mitchell

KWR

Indictment for

Larceny/Grand Larceny, value more than \$2,000
but less than \$10,000SC Code: 16-13-30(B)
CDR Code: 3420

A TRUE COPY

APR 14 2016

Richard H. Wiley
ANDERSON CLERK OF COURT

COMMITMENT

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,


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 17th day of August, 2017.

RECEIVED
AUG 17 2017
SC Court of Appeals