

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge  
Case Nos.: 2012-GS-23-07504,07507

**RECEIVED**

APR 05 2018

SC Court of Appeals

Appellate Case No. 2018-000564

THE STATE, ..... RESPONDENT

v.

GEORGE CLEVELAND, III, ..... APPELLANT

**RETURN TO MOTION TO STAY**

Comes now, Matthew Buchanan, General Counsel for the South Carolina Department of Probation, Parole and Pardon Services (the Department) on behalf of the State, and respectfully requests that Appellant’s Motion to Stay be denied.

In his Motion to Stay, the Appellant states that he has filed a Motion to Reconsider pursuant to Rule 59(E) of the Rules of Civil Procedure. The Appellant was revoked 90 days after a probation violation hearing, which fall under the Rules of Criminal Procedure. The Rules of Civil Procedure do not apply to probation violations. See State v. Franks, 276 S.C. 636, 638, 281 S.E.2d 227, 228 (1981) “A proceeding for the revocation of this privilege of probation is more in

the nature of an extension of the original proceedings than it is a separate criminal prosecution.”

Even if this Motion for Reconsideration is to be viewed as being filed under Rule 29(a) of the Rules of Criminal Procedure, the Motion to Stay should still be denied. Section 17-25-322(C) requires that probation agents “must initiate legal process to bring every probationer, whose restitution is six months in arrears, back to court, regardless of wilful failure to pay.”

The citation bringing the Appellant to court requests that the court to determine “whether or not the defendant has willfully violated the condition to pay fines, and/or restitution[.]” See Appellant’s Exhibit 5.

“[A] court may not revoke probation solely on the basis of the failure to pay money unless the court makes certain findings of fact regarding the willfulness of the failure to pay.” State v. Coker, 397 S.C. 244, 245, 723 S.E.2d 619, 620 (Ct.App. 2012). The trial court chose to revoke the Appellant 90 days after the violation hearing, so the trial court must have found that the Appellant’s failure to pay was willful. The Appellant is requesting a reconsideration of the trial court’s action by citing Section 19 of the South Carolina Constitution; but when a probationer’s choice to not pay restitution is determined by the court, the probation may be revoked. State v. Spare, 374 S.C. 264, 647 S.E.2d 706 (Ct.App.2007).

CONCLUSION

Because the Appellant is requesting a Reconsideration pursuant to an inapplicable Rule, and that the trial court may revoke probation when there's been a finding of a willful choice not to pay restitution, the Appellant's Motion to Stay should be denied.

Respectfully submitted,



Matthew C. Buchanan  
General Counsel  
South Carolina Department of Probation,  
Parole and Pardon Services  
2221 Devine St., Suite 600  
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Columbia, South Carolina  
April 4, 2018

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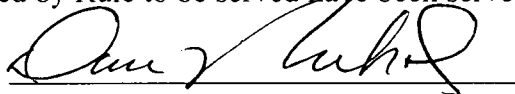
GEORGE CLEVELAND, III, ..... APPELLANT

**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within  
*Return to Motion to Stay* dated April 4, 2018, on Appellant this 4<sup>th</sup> day of April, 2018, by  
depositing a copy of the same in the United States mail, postage prepaid, addressed to:

George Cleveland, III  
Anderson County Detention Center  
1009 David Lee Coffee Place  
Anderson, S.C. 29625

I further certify that all parties required by Rule to be served have been served.



**Dawn K. Nichols**  
**Executive Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250

State of South Carolina  
Department of Probation, Parole and Pardon Services

HENRY McMASTER  
Governor



JERRY B. ADGER  
Director

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April 4, 2018

The Honorable Jenny Kitchings  
Clerk of the South Carolina Court of Appeals  
1015 Sumter Street- 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

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SC Court of Appeals

VIA U.S. Mail and FAX NO.:803-734-1839

**RE: State v. George Cleveland, III**

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Return to Motion to Stay*, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan  
General Counsel

MCB:dn

Enclosures

cc: George Cleveland, III