



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 19, 2018

John Joseph Hart, 376073
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

Re: The State v. John J. Hart
Appellate Case No. 2018-000827

RECEIVED
JAN 16 2019
SC Court of Appeals

Dear Appellant:

Your counsel has filed a brief indicating that this appeal is without merit and moves to be relieved as your counsel. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L.E.2d 493 (1967). The records in this office reflect counsel has served you with a copy of the brief and record on appeal.

~~You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* brief addressing any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* brief or the expiration of forty-five (45) days, this appeal will be submitted to the Court for its consideration.~~

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Matthew C. Buchanan, Esquire
Taylor Davis Gilliam, Esquire

Table of Contents

Pages 1-4 / My pro se brief for case No. 2018-000827

Other

Page 1 - Sentencing sheet from 12-7-16

Page 2 - South Carolina Department of Parole, Probation, and Pardon Services
Violation report

Page 3 - Tenth Circuit Public Defender office / Letter from Patti B. Ferguson about
family court order

Page 4 - Tenth Circuit Public Defender office / Letter of dismissed charges
from Patti B. Ferguson

Pages 5-6 - Anderson County Public Index

Page 7 - Revoke of Probation

Page 8 - Warrant for Domestic Violence 1st Degree

Page 9 - Transcript from Hearing

Attention:

1-13-19

State of South Carolina Court of Appeals

The State

V.

John Joseph Hart
Defendant,

Appellate case No.

2018-000827

RECEIVED

JAN 16 2019

SC Court of Appeals

This is my Pro se brief on why the court should rule in my favor of this appeal.

On 12-7-16 I was sentenced to 3yrs; Suspended to 3yrs probation on the charge of Domestic Violence 2nd Degree.

Case # 2016A0410101120 / See attached page 1 for sentencing sheet

Below is important information that lead to this appeal on this day.

On 11-27-17 I had a probation violation for drug use, leaving the state, New charge (D.U.I. while out of state), and for failing to pay probation fees. On 1-22-18 I

had a in house hearing at probation office where I was told to have a Mental Evaluation as well as Substance

Abuse Evaluation completed and pay current fees within

90 days. (see Page 2 - Section 1 of S.C. Parole Violation report)

On 2-23-18 I was advised to have no contact with the (Wife) = Victim from the charge above of Domestic Violence 2nd Degree.

I gave the probation officer Mr. Nebstitt a new address as he stated in court 4-20-18. (This can be seen in the transcript on

page 4 - Lines 12-25 and page 5 - Lines 1)

Continued from Page 1:

1-13-19

On 2-26-18 two days after leaving home because of of this "No Contact" order my wife starts accusing me of "cheating" on her, and files charges against me alleging I had assaulted her. I then am charged with Domestic Violence 1st Degree.
(Case # 2018A0410200228 / see Page 8 for Warrant)

On 4-20-18 I went to court on Probation Violation charge (Case No. 16-G-5-04-2518 in front of the Honorable R. Lawton McIntosh in the Court of General Sessions in Anderson County.

Appearances were as follows:

Joshua Nebstitt, Probation Agent appearing for State of South Carolina

Heather Scalzo, ESQ. Appearing for Defendant

Below are my findings and reasons for this appeal:

I find that Judge McIntosh found me guilty of probation violations that were unfounded, untruthful, and violations that had already been dealt with. Judge McIntosh says I willfully violated my terms of probation in that I lived with the victim (my wife) (can be read on page 10 - Lines 15-18 of my included transcript), he says I also failed to get a Mental Health Evaluation and Substance Abuse Counseling (can be read on page 10 - Lines 18-20 of transcript), Plus he brings up pending charge that has not been ruled on in court.

1-13-19

Here are the problems with this. How can he violate me for living with the victim (wife) when per South Carolina State Law 20-4-70 - Duration of Order for Protection modification of Terms, A "No Contact Order" can be no less than 6 months and no more than 1 year. So from 12-7-16 (Day I was sentenced on first charge) to 12-7-17 was one year so if they had been a "No Contact" order in place it would have been void after 12-7-17.

Furthermore Probation officer J. Nebsitt also kept referring to a Family Court order for protection and "No Contact" (see Page 4 - Lines 16-24 of transcript)

Per Patti B. Ferguson at Tenth Circuit Public Defender Office

She was unable to locate anything in Family Court for Order of Protection for Plaintiff Crystal Hart involving Defendant John Joseph Hart. (See attached Page 3 from Patti B. Ferguson Public Defender Office section 2) As for Judge

McIntosh using me failing to seek out the Mental Evaluation and Substance Abuse Counseling that was ordered on 1-22-18 I had not had adequate time from the time it was ordered till the time this bogus charge of Domestic Violence was filed on 2-26-18. I turned myself in on 3-8-18 which was 47 days since I was ordered to seek the help along with the 30 days I had to wait to be referred by the probation office. I'm not sure why Judge McIntosh brought up the charge for Domestic Violation 1st degree because you can't sentence me on a charge that has not been ruled on in court.

If it were not for the fabricated lies that brought on the charge of Domestic Violence 1st degree I would not have even been in court because the prior violations had already been handled

(See Page 10 - Lines 12-14 of transcript and also Page 2 of Violation report Section 1)

1-13-19

My point is there was no reason to revoke my probation and send me to prison as the violations I had accrued had been dealt with, I had not had adequate time for the counseling, and the charge of Domestic Violence had not been ruled on. As I stated earlier the charge of Domestic Violence 2nd degree was fabricated lies, and as you will find attached on page 4-6 from Patti B. Ferguson at Tenth Circuit Public Defender Office highlighted in yellow the charges have been dismissed. So with this timeline of events there is no reason I should be incarcerated at this time. I hope you will consider my appeal and I look forward to hearing from you.

Thanks
John Hart

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON

STATE VS.

JOHN JOSEPH HART

AKA: _____
Race: White Sex: M Age: 34
DOB: 03/21/1982 SS#: 247-51-6329
Address: 128 Wellington St.
City, State, Zip: Anderson, SC 29624
DL# _____ SID# SC02266372

INDICTMENT/CASE#: 2016 GS0402518
A/W: 2016A0410101120
Date of Offense: 10/17/2016
S.C. Code §: 16-25-0020(A) and 16-25-0020(C)
CDR Code #: 3812

SENTENCE SHEET

Upto 3yrs or 1/2 \$2500-5K

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []
In disposition of the said indictment comes now the Defendant who was TO: Domestic Violence, 2nd Degree

CONVICTED OF or PLEADS 3yrs susp 51 days c/w 3yrs prob., n.c., 5 a.m.

In violation of § 16-25-0020(A) and 16-25-0020(C) of the S.C. Code of Laws, bearing CDR Code # 3812

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS (CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [] As indicted, [] Lesser Included Offense, [X] Defendant Waives Presentation to Grand Jury.
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTEST: Kristin W. Reeves, Assistant Solicitor SC Bar # 69673
John Hart Defendant
W. Kelly Attorney for Defendant SC Bar # 0066304

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections [] County Detention Center, for a determinate term of 3 days/months/years or [] under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 51 days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:
[X] 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. 51 Days T/S
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ 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 installments of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

A TRUE COPY
MAY 18 2018
Richard A. Huley
CLERK OF COURT

[] Set by SCDPPPS
Recipient: _____
*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 61.6 (Public Def/Prob) \$500 \$500.00
§14-1-212 (Law Enforce. Funding) \$25 \$25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____ \$18.75

TOTAL \$643.75
Richard A. Huley
Clerk of Court/Deputy Clerk
Court Reporter: V. Cross
SCCA/217 (07/2016)

Other: No contact with victim's family
Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: [Signature]
Judge Bar ID: [Signature]
Sentence Date: 12/11/16

South Carolina Department of Probation, Parole and Pardon Services Violation Report

Offender's Name: **JOHN JOSEPH HART**

Section
1

Prior Violation Dates	Prior Violations	Prior Violation Disposition
11/27/2017	Admitted drug use. Leaving the state. New charges. Failing to pay monies	1/22/18 - AH; INT SUP NTE SIX MNTHS; PAY AT REGULAR RATE OF \$50/MO; RESTRUC PDF; ATTEND MH & SAC AS DIRECTED; EXEMPT \$300 SUP FEE ARREARS; PAY SUP FEE CURRENT WITHIN 90-DAYS

Details of the Present Violation:

Condition 6: By having probable cause to believe offender committed the act of Domestic Violence 2nd degree on 02/26/2018 as evident in ACSO I/R 2018-03649.

Condition 10: By failing to follow the instructions of the agent in that the agent advised offender during an office visit on 2/23/2018 that he was to have no further contact with the victim until his case could be reviewed by a judge, yet there is reason to believe he made violent contact on 2/26/2018 per ACSO I/R.

These constitute violation of sections 6, 10, & Special Conditions of the Standard Conditions of Probation.

Agent's Recommendation:

Revocation. Recommend ATU.

Agent's Justification:

Offender was just taken to a hearing over a serious violation involving drug use and leaving the state. Now it has escalated to him disobeying direct instructions from the agent and not only making contact with the victim, which the court has ordered against, but it is a matter of violent contact. The offender was ordered to have a mental health evaluation and attend SAC at the last hearing, however, for the safety of the victim, the above is being recommended and the offender can receive the necessary help from within the Department of Corrections due to it being clear he will not abide by the conditions of a probation sentence.

Hearing Officer Recommendation:

Hearing Officer Justification:

Joshua Nebsitt

DV Agent

Date: 03/01/2018

Supervisor's Signature _____

Date: _____



53

TENTH CIRCUIT PUBLIC DEFENDER OFFICE

ANDERSON AND OCONEE COUNTIES

Anderson County Office
301 Camson Road
Anderson, SC 29625
Tel. 864.260.4048
Fax 864.260.4134

JENNIFER L. JOHNSON
Circuit Public Defender

Oconee County Office
415 S. Pine Street
Walhalla, SC 29691
Tel. 864.638.3133
Fax 864.638.0228

October 2, 2018

John Joseph Hart, INmaate Number: 00376073
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, South Carolina 29827

Re: State -vs- John Joseph Hart

Dear Mr.Hart:

This is to confirm our telephone conference call, from today's date.

~~On August 1, 2018, I had a telephone conversation with Taylor Gilliam, the attorney who k. assigned to the appeal of your probation violation. Since that time, I have also spoken with you. You have requested a jury trial, on these charges and a motion for a speedy trial. A copy of that motion is attached.~~

~~I have looked at the public index for Anderson County, South Carolina, for the Family Court. There is no family court action filed naming Crystal Hart as a Plaintiff; there is no action involving John Joseph Hart as a Defendant. There is no family court order of protection of record. However, there may have been a provision for "no contact with the victim" that was part of your sentence sheet from December 2016. Once I have a copy of the sentence sheet, I will forward it to you. I will not get a copy of your plea in December 2016.~~

Sincerely,

Patti B. Ferguson
Sr. Assistant Public Defender

Cc: Taylor Davis Gilliam, SC Commission on Indigent Defense

Section 2



TENTH CIRCUIT PUBLIC DEFENDER OFFICE

ANDERSON AND OCONEE COUNTIES

Anderson County Office
301 Camson Road
Anderson, SC 29625
Tel. 864.260.4048
Fax 864.260.4134

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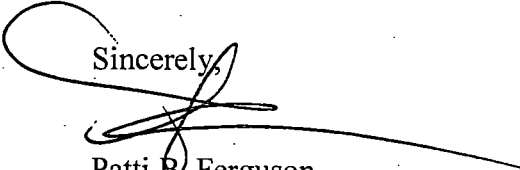
January 3, 2019

John Joseph Hart, Inmate Number 376073
McDougal Correctional Institution
1516 Old Gillard Road
Ridgeville, South Carolina 29472

Dear Mr. Hart:

Enclosed please find a copy of the Anderson County Public Index, regarding your charge for domestic violence, first degree, which shows that the charges have been nolle prossed/dismissed.

Sincerely,


Patti B. Ferguson
Sr. Assistant Public Defender

195



Anderson County Tenth Judicial Circuit Public Index



Anderson County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

The State of South Carolina VS John Joseph Hart

Case Number:	2018A0410200228	Court Agency:	General Sessions	Filed Date:	03/15/2018
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Solicitor
Disposition:	Nolle Prosequi				
Disposition Date:	12/06/2018	Date Received:	03/15/2018	Arrest Date:	03/09/2018
Law Enf. Case:	2018-03649	True Bill Date:	07/24/2018	No Bill Date:	
Prosecutor Case:		Indictment Number:	2018GS0401957	Waiver Date:	
Probation Case:					

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Hart, John Joseph	208 Wellington St. Anderson SC 29624	White	M	1982	Defendant		12/06/2018
Mauldin, Sherry E	1009 County Home Rd Detention Ctr Anderson SC 29625				Officer		03/15/2018

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hart, John Joseph	3811-Domestic / Domestic Violence, 1st degree	3811-Domestic / Domestic Violence, 1st degree	12/06/2018

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Hart, John Joseph	True Bill Indictment	Filing		07/24/2018-11:05	12/06/2018-11:05	
Hart, John Joseph	Filing/Case File	Filing		03/15/2018-14:42	12/06/2018-14:42	

Financials

Summary					
Fine/Costs:	Total Paid for fine/costs:	Balance Due:			
\$0.00	\$0.00	\$0.00			
Costs					
Description	Cost Code	Amount	Charge Action	Disbursed Amount	

(P36)

Fine to State 44%	AFINES	\$0.00	\$0.00
Fine to General Fund	AFNEGF	\$0.00	\$0.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$0.00	\$0.00
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$0.00	\$0.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$0.00	\$0.00
State Assessment	STAASM	\$0.00	\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
None				

Bonds

Bond Information

Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2018B00410201104	03/09/2018		Malone	Surety Bond	\$10,000.00		\$0.00	

Post Information

None				
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A TRUE COPY

STATE OF SOUTH CAROLINA

County of Anderson

STATE

John Joseph Hart

AKA:

Race: White

Sex: Male

DOB:

SSN:

SID#: 02266372

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

- GS - 04 - 02518

Probation C/W#s: W-04-18-0077

Name of Original Offense: Domestic Violence 2nd degree

Original A/W#: 2016A0410101120

Date of Original Offense: 10/17/2016

Conviction S.C. Code §: 16-25-0020(A) & 16-25-0020(C)

Conviction CDR Code #: 3 / 8 / 1 / 2

Original Sentence: 3ys sus 51 days cts w/ 3 ys probation

APR 24 2018
Anderson Clerk of Court

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 12 / 07 / 2016 in the Court of General Sessions of Anderson 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 3/1/2018

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)

6, 10 & Special Conditions

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve 3 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 electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Financial Obligations: Order satisfies: Department fees (arrange) Fines and other fees (arrange/balance) Restitution (and 20%) (arrange / balance) Civil judgment: Department fees Fines and other fees Restitution (and 20%)

Additional Conditions ordered by the Court:

Proctor in Full, Reconnect mental health evaluation. Time serves fees, fines and monies. Credit per hearing from 4/8 days.

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 is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).

The defendant has served 5 days/months/years of prior revocations and/or initial SCDC time.

The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 29 day of April 2018 SC

Presiding Judge

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

Witnessed by

Signed this 20 day of April 2018 at

Anderson City SC

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MAY 02 2018
SC Court of Appeals

ARREST WARRANT

2018A0410200228

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Anderson

THE STATE

2018-03649

against

John Joseph Hart

Address: 208 Wellington St.

Anderson, SC 29624-

Phone: SSN:

Sex: M Race: W Height: 5 8 Weight: 132

DL State: DL #:

DOB: 3/21/1982 Agency ORI #: SC0040000

Prosecuting Agency: Anderson County Sheriff

Prosecuting Officer: Sherry E Mauldin - 229

Offense: Domestic / Domestic Violence, 1st degree

Offense Code: 3811

Code/Ordinance Sec: 16-25-0020(B)

This warrant is CERTIFIED FOR SERVICE in the

[] County/ [] Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
Po Box 8002
Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Anderson

Personally appeared before me the affiant Sherry E Mauldin

being duly sworn deposes and says that defendant John Joseph Hart

did within this county and state on or about 2/26/2018

State of South Carolina (or ordinance of [X] County/ [] Municipality of

Anderson

in the following particulars:

DESCRIPTION OF OFFENSE: Domestic / Domestic Violence, 1st degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

that on February 26, 2018, in the county of Anderson, one John Joseph Hart did injure and attempt to injure the victim, Crystal Hart, under circumstances creating fear of imminent peril. Defendant did shove the victim into the bathroom, struck her in the head with a closed fist, knocked her to the ground and choked her, and kneed her in the ribs. Incident occurred at 208 Wellington St., Anderson, SC, in the presence of a minor female child who the defendant and victim have in common. Incident was witnessed and defendant does have a prior conviction for domestic violence.

Signature of Affiant

Sherry Mauldin

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Anderson

Affiant's Address 1009 County Home Rd Detention Ctr

Anderson, SC 29625-

Affiant's Telephone (864)260-4400

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2018 defendant John Joseph Hart

did violate the criminal laws of the State of South Carolina (or ordinance of

[X] County/ [] Municipality of Anderson

) as set forth below:

DESCRIPTION OF OFFENSE: Domestic / Domestic Violence, 1st degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 2/27/2018

Signature of Issuing Judge (L.S.)

James Wesley White

Judge Code: 7233

Judge's Address 2404 N. Main St

Anderson, SC 29621-

Judge's Telephone (864)231-3119

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by S.C. Attorney General

SCCA 518

A TRUE COPY

MAR 5 2018

Anderson Clerk of Court

FILED CLERK'S OFFICE ANDERSON SC 2018 MAR 15 PM 3:02

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SC 29472



RECEIVED
JAN 16 2019
SC Court of Appeals

South Carolina Court of Appeals - Attn. Jerry Abbott
P.O. Box 11629
Columbia, SC 29211

MacDougal Correctional Inst.
Mailroom
JAN 14 2019
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