

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

V.

PEPPER ROSE RATHBURN,

RECEIVED
AUG 29 2018
SC Court of Appeals
RESPONDENT,

APPELLANT

APPELLATE CASE NO. 2017-002560

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) 2016-GS-21-01569

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

December 8, 2017

PEPPER ROSE RATHBURN,)

Defendant.)

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

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

Emily M. Crayton, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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I N D E X

DECEMBER 8, 2017

Pg.

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By the Court
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Certificate of Court Reporter

E X H I B I T S

No.

ID

EV

(No exhibits marked or admitted.)

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BY THE COURT

3

1 (DECEMBER 8, 2017 - 12:29 P.M.)

2 THE COURT: All right.

3 MS. CRAYTON: Your Honor, before we begin, I spoke with
4 Ms. Rathburn this morning and she was on probation in North
5 Carolina. She did not know that today would be the resolution
6 of the case. She thought she was going to come today and have
7 an attorney appointed. She would like time to speak to a
8 private attorney and she's asking if the Court would consider
9 continuing this matter. I don't think that Mr. Bird has -- or
10 Agent Bird has an objection to that.

11 THE COURT: She was served with notice of this hearing
12 today back in October of 2017, and she was advised at that
13 time that it would be a violation hearing in General Sessions
14 Court; therefore, I am respectfully denying your request.

15 Yes, sir, Mr. Bird?

16 MR. BIRD: This is Pepper Rose Rathburn serving under
17 indictment 16-GS-21-1569, legal custodian unlawful neglect of
18 a child. She was sentenced by Judge Seals. Her probation
19 began on October 18th of 2016 and was scheduled to end on
20 October 17th, 2019. She had seven years suspended to three
21 years probation with special conditions to remain in
22 compliance with DSS orders. She's been living in North
23 Carolina. The case was transferred through ICOTS to North
24 Carolina. There's no report of her living situation in the
25 file. No report has been received regarding her reporting

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PEPPER ROSE RATHBURN - BY THE COURT

4

1 history with North Carolina. She has reported to our office
2 as instructed since her arrest and extradition. It's our
3 understanding that her income was solely from a death benefit
4 she received from her husband's death. Her accounts have been
5 paid most recently. Her present violations are that our ICOTS
6 office in Columbia issued the warrants on September 29th and
7 it was served on October 19th and that was due to the
8 violation report dated 9/20/2017 and prepared by North
9 Carolina that Pepper Rathburn failed to refrain from violating
10 state and local laws being that she'd been convicted in
11 Brunswick County, North Carolina, Superior Court Division for
12 possession with intent to distribute drugs. She received a
13 sentence of 4 to 14 months suspended to 18 months supervised
14 supervision. She failed to pay drug test fees, failed to pay
15 the application fee, failed to pay a fine, also her DNA fine.
16 These violations are willful violations.

17 THE COURT: Ma'am, if you'd raise your right hand.

18 PEPPER ROSE RATHBURN, HAVING
19 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE COURT: You are Pepper Rose Rathburn?

21 MS. RATHBURN: Yes, sir.

22 THE COURT: Do you admit or have you talked with your
23 lawyer concerning this revocation hearing?

24 MS. RATHBURN: Yes, sir.

25 THE COURT: Do you admit willfully violating your

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PEPPER ROSE RATHBURN - BY THE COURT

5

1 probation?

2 MS. RATHBURN: Yes, sir.

3 THE COURT: Pursuant to what I've heard here today by
4 probation, I do find the Defendant has willfully violated the
5 terms and conditions of probation as stated on the record and
6 more specifically set forth in the 1106 and admitted to by the
7 Defendant. Pursuant to such findings, I'll be happy to hear
8 from you, Defense Counsel, concerning any mitigation.

9 MS. CRAYTON: Thank you, Your Honor. I spoke to Ms.
10 Rathburn earlier and I tried to reach her North Carolina
11 attorney. She tells me when she pled to that offense in North
12 Carolina and received probation, as part of that agreement,
13 plea agreement, North Carolina said that they would not seek a
14 violation of her probation for that charge, the new offense.
15 And I've been trying to contact her North Carolina attorney
16 but I haven't been able to reach him yet. Unfortunately, that
17 was not a decision that they had to make; that was South
18 Carolina's decision given the fact that the original charge
19 came from South Carolina even though she was being supervised
20 in North Carolina. I don't know if they didn't understand
21 that or her attorney didn't understand that, but she tells me
22 she would not have pled to that original charge if she had
23 known that it would result in a probation violation here in
24 South Carolina.

25 She has been reporting in both North Carolina and South

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PEPPER ROSE RATHBURN - BY THE COURT

6

1 Carolina for the last two months. So, she's done really well
2 with that. She has custody of her four children, a 12-year-
3 old, a 14-year-old, a 16-year-old, and an 18-year-old. I
4 guess the 18-year-old is really considered an adult but still
5 living with her. She has one other child who is 20 who is in
6 the Army serving in South Korea. She's been paying her money
7 and she's almost caught up on that and has done better with
8 that. She tells me that she has a medical assistant degree.
9 She is a widow, as Agent Bird stated. She's been waiting on
10 TASC, which is drug rehabilitation program in North Carolina
11 that they're gonna enroll her through through her probation in
12 North Carolina, but they had to get this violation through
13 before she could be enrolled in that program. I would ask if
14 you would continue her on probation and allow her that drug
15 treatment program. She's -- I think she has done fairly well
16 and she is the -- I mean, her -- she is widowed so these
17 children, she is really their, you know, their only guardian,
18 and she is very concerned about the possibility of going to
19 jail today and very nervous about that, which is why she
20 wanted to speak to her North Carolina attorney and -- before
21 she went forward here today. And like I said, I've called him
22 several times. It keeps going to his voice mail, Your Honor,
23 and I just haven't been able to get him on the phone.

24 THE COURT: All right. Ms. Rathburn, anything you want
25 to tell me?

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PEPPER ROSE RATHBURN - BY THE COURT

7

1 MS. RATHBURN: No, sir.

2 THE COURT: Ma'am?

3 MS. RATHBURN: I just would ask that you would continue
4 my probation.

5 THE COURT: Mr. Bird, I want her drug tested. All right.
6 Let's drug test her.

7 (RECESS - 12:46 P.M.)

8 *****OFF THE RECORD*****

9 (On the Record - 1:23 P.M.)

10 (REPORTER'S NOTE: Bench conference on the record.)

11 THE COURT: Come up here, on the record.

12 MS. CRAYTON: I was able to make contact finally with the
13 attorney in North Carolina and he told me that the DA actually
14 had told her that he would not seek a violation of her
15 probation. Obviously, he didn't have the authority to do that
16 but I did want to let you know I did -- I was able to
17 corroborate that and she, you know, I'm not -- you know,
18 truthfully, I think they probably have a problem in North
19 Carolina making that promise and then, you know, with that
20 plea, but if ---

21 THE COURT: Well, if she signs documents because she get
22 put on probation -- I understand where you're coming from ---

23 MS. CRAYTON: Yeah.

24 THE COURT: But she signed a document saying the very
25 stuff, I mean, you know, under contract law, she's bound to

1 it.

2 MS. CRAYTON: I know. I mean, obviously, they didn't
3 have the ---

4 THE COURT: What did she test? Positive or negative for
5 -- what's the drug test.

6 MR. BIRD: Amphetamines and alcohol.

7 THE COURT: See, I mean, I know you're in a bad
8 situation. I mean, I can't help it.

9 MS. CRAYTON: I understand. I understand. You know, she
10 is currently on probation in North Carolina.

11 MR. BIRD: North Carolina. The reason it came back to
12 South Carolina is because it's a mandatory through ICOTS that
13 it has to come back to South Carolina and be handled, which is
14 a violation of her probation like she just said.

15 MS. CRAYTON: Yeah, but I mean -- yeah.

16 MR. BIRD: And she is currently being supervised.

17 THE COURT: What?

18 MR. BIRD: She is currently being supervised in North
19 Carolina.

20 MS. CRAYTON: So, I mean, if you were to just terminate
21 her, she would -- which I know you're not gonna do, especially
22 looking at me like that, but if you were to terminate her, she
23 would still be supervised even if you did something like a
24 small, you know, like a local, something local, she would
25 still be on probation in North Carolina.

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PEPPER ROSE RATHBURN - BY THE COURT

9

1 THE COURT: All right. Let's deal with this.

2 (REPORTER'S NOTE: End of bench conference.)

3 THE COURT: All right. Ms. Crayton, are you ready to
4 proceed?

5 MS. CRAYTON: Yes, Your Honor.

6 THE COURT: All right. We stood down on this matter
7 concerning Ms. Rathburn because I wanted her drug tested. And
8 she has been drug tested. What were the results, Mr. Bird?

9 MR. BIRD: She was positive for amphetamines and alcohol.

10 THE COURT: Ms. Crayton, any question in your mind that
11 she's -- is she under the influence today?

12 MS. CRAYTON: No, Your Honor.

13 THE COURT: No question in your mind?

14 MS. CRAYTON: No, Your Honor.

15 THE COURT: You hadn't had any problems communicating
16 with her?

17 MS. CRAYTON: No, Your Honor.

18 THE COURT: Any question in your mind about her ability
19 to know and understand what's going on here today?

20 MS. CRAYTON: No questions, Your Honor.

21 THE COURT: All right. Anything further, Ms. Crayton?

22 MS. CRAYTON: Your Honor, I will tell you that Ms.

23 Rathburn did go, I believe, sometime this year to rehab for
24 her heroin problem. I think that was her main addiction and
25 she has been doing well to avoid that drug usage, the heroin

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PEPPER ROSE RATHBURN - BY THE COURT

10

1 usage, as Your Honor knows, is very serious. I would ask -- I
2 did -- just for the record, Your Honor, I will tell ---

3 THE COURT: And it was on -- it was on the record.

4 MS. CRAYTON: Oh, it was on the record, okay.

5 THE COURT: You can say it you want to, go ahead.

6 MS. CRAYTON: I was able to confirm through her North
7 Carolina attorney that the DA in North Carolina did say that
8 he would not seek a violation of her probation, something he
9 was not authorized to make a statement about, but we would ask
10 if you can't allow her to just terminate and do her probation
11 that's ordered in North Carolina, we would ask for a local
12 termination, something that would keep her for a short period
13 of time and allow her to go back to her children in North
14 Carolina. She's obviously very concerned about what to do
15 with her children if she is incarcerated, Your Honor.

16 THE COURT: All right. Ms. Rathburn, anything you want
17 to tell me?

18 MS. RATHBURN: No, sir.

19 THE COURT: Where did you go -- what kind of drug
20 treatment did you go to?

21 MS. RATHBURN: I went to Walter B. Jones, in August. I
22 went for crack and heroin, got treated. I was there for about
23 10 days, detoxed, been out, been doing great since, trying to
24 get in through TASC with North Carolina, but they stopped
25 everything when I got violated from y'all. They said that

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SENTENCE OF THE COURT

11

1 until this is taken care of, they can't start my TASC program.

2 MS. CRAYTON: And that's that drug rehabilitation program
3 I spoke about earlier, Judge, that they'd like to do through
4 her North Carolina probation.

5 THE COURT: How old are your kids?

6 MS. RATHBURN: 12, 14, 16, 18, and 20.

7 THE COURT: All right. Anything further from the State?

8 MR. BIRD: Yes, sir. We would also like to request the
9 223.58 costs.

10 SENTENCE OF THE COURT:

11 THE COURT: I'm gonna revoke 30 months, order that she go
12 to the Addictions Treatment Unit while she's in the Department
13 of Corrections. Terminate her probation. Convert all fines,
14 fees, et cetera, to civil judgment.

15 Good luck to you, ma'am.

16 MS. RATHBURN: Thank you, sir.

17 MR. BIRD: Thank you.

18 (ADJOURNED - 1:29 P.M.)

19

20

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22

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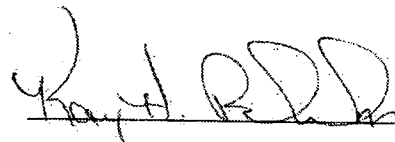
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25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Pepper Rose Rathburn, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on December 8, 2017.

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



Kay H. Richardson

Official Court Reporter

February 27, 2018.

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on SEPTEMBER 29, 2016 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- UNLAWFUL CONDUCT TOWARDS A CHILD

CDR: 2481 63-5-0070

That Pepper Rose Rathburn did in Florence County on or about February 19, 2016, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of a minor child, age twelve years, place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child, in violation of Section 63-5-70, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Farrah Turner

Florence County Sheriff

DOCKET NO. 2016-GS-21-01569

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

SEPTEMBER

TERM

2016

THE STATE

vs.

PEPPER ROSE RATHBURN

David A Richardson

ARREST WARRANT NUMBER

2016A2110200448

ACTION OF GRAND JURY

TRUE BILL

Boa Davis

Foreperson of Grand Jury

Date: 9-29-16

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

UNLAWFUL CONDUCT TOWARDS A CHILD

CERTIFIED A TRUE COPY

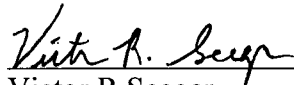
Shirley A. Ottens
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2016 SEP 29 PM 12:07
CLERK OF COURT
C.P. & G.S.
FLORENCE COUNTY, SC

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,



Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of August, 2018.

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SC Court of Appeals