

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

D. Craig Brown, Circuit Court Judge

RECEIVED

JUN 10 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

OSLES CUNNINGHAM,

APPELLANT

Appellate Case No. 2012-212762

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2010-GS-29-0916, 2010-GS-12-0728
5
6 State of South Carolina
7 vs.
8 Osles Cunningham
9
10
11 Lancaster, South Carolina
12 August 13, 2012
13 Before the Honorable D. Craig Brown
14
15 APPEARANCES
16 For the State: Agent Burch
17 For the Defendant: William Frick
18
19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

1 Probation Violation Hearing: 3

2 Certificate: 15

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1 AGENT BURCH: This is Osles Cunningham, he was put on
2 probation in March of 2011 for two counts of forgery less
3 than \$5,000. He was sentenced to five years suspended on
4 five years probation. This was his first violation but he
5 last reported on June of 2011 and been absconded ever since
6 and was picked up.

7 THE COURT: Where?

8 AGENT BURCH: In Charlotte, North Carolina.

9 THE COURT: All right. Hold on just a second. Go
10 ahead and read into the record the present violations as
11 stated on the 1106.

12 AGENT BURCH: He violated conditions 1, 2, 5, 7, 9, 10
13 and 11 on file number GS12728 and 10GS2916. He was in the
14 Lancaster Court of General Sessions on November 18th of 2010
15 and was sentenced by the Honorable Judge Goldsmith. He
16 failed to follow the advice and instruction of his agent, he
17 failed to report as instructed. He missed his report on
18 July 11th of 2011 and for August of 2011, he last reported
19 on June 6th of 2011. He failed to gain permission from his
20 agent before changing his residence. On August 3rd of 2011
21 it was learned that Cunningham no longer stayed at his
22 reported address at 408 Rock Street, when he, in fact, lived
23 in Columbia thereby absconding supervision. He failed to
24 work diligently at an occupation having been unemployed
25 since being placed on probation and having the ability to

1 work. He failed to pay his supervision fees being \$300 in
2 arrears at the issuance of process. He failed to pay the
3 public defender fund for indictment 916, being \$126 in
4 arrears at the issuance of process. He failed to pay his
5 drug test fee being \$120 in arrears at the issuance of
6 process, and he failed to pay restitution on indictment 916
7 being \$180 at the issuance of process and failing to pay
8 restitution for indictment 728 being \$60 in arrears at the
9 issuance of process. He has never paid anything on any of
10 his accounts.

11 THE COURT: Mr. Frick, you represent Mr. Cunningham?

12 MR. FRICK: Yes, sir.

13 THE COURT: Have you received and reviewed the 1106
14 violation report with him?

15 MR. FRICK: Yes, sir.

16 THE COURT: Does your client admit a willful violation?

17 MR. FRICK: Your Honor, he admits he has failed to
18 report.

19 THE COURT: So that in and of itself would be a willful
20 violation of the terms and conditions of probation.

21 MR. FRICK: We understand that, yes, sir.

22 THE COURT: Do you need anymore time to talk to him
23 about it?

24 MR. FRICK: No, sir.

25 THE COURT: Sir, you are Mr. Osles Cunningham?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You've heard your lawyer indicate he has
3 received and reviewed this violation in court with you; is
4 that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need anymore time to talk with him
7 about it?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you admit a willful violation of the
10 terms of your probation?

11 THE DEFENDANT: Yes. Just the one about not reporting,
12 yes, sir.

13 THE COURT: Any objection, Mr. Frick, to the 1106 being
14 made part of the record?

15 MR. FRICK: No, sir.

16 THE COURT: By the state?

17 AGENT BURCH: No, sir.

18 THE COURT: I do find a willful violation of the terms
19 and conditions of probation as stated by the agent, more
20 specifically set forth in the form 1106 violations that's
21 been made a part of the record and without objection. Based
22 upon the Court's finding of a willful violation of the terms
23 and condition of probation I will now hear from you,
24 Mr. Frick, with regards to any mitigation.

25 MR. FRICK: Thank you, Your Honor. Your Honor, I have

1 known Osles for awhile now, I have represented him on more
2 than one occasion. And, of course, as stated in the 1106
3 he's been on probation before, I think I've gotten him those
4 probation cases. Two things that happened over those
5 periods of time both of us have gotten a little gray in our
6 beards. But, Your Honor, in all of the times I have known
7 Mr. Cunningham this is the first time that he has been in
8 court without incurring additional charges. I know that's
9 what we're supposed to do but that's not been the case with
10 Mr. Cunningham in the past but he has certainly gotten
11 himself in a lot better situation. We're not saying we did
12 correctly on probation, we understand and we're here to face
13 the consequences on that, but I do want you to know where
14 Mr. Cunningham has come from and where he is today. He has
15 found a very good woman who I have spoken with this
16 afternoon, his wife is out in the audience, just raise your
17 hand for right now. I think she's going to want to address
18 you here in a minute. But he got with her awhile ago. Of
19 course, the economic situation was not real good
20 particularly with someone with a record. Mr. Cunningham did
21 go to Columbia for work, got work down there. I think
22 probation probably knew he was down in Columbia but
23 Mr. Cunningham certainly did not do what he was supposed to
24 do to make the necessary steps to get his probation
25 transferred to Richland County and he understands that. But

1 it is -- I understand it's phrased as absconding, I
2 understand you've still got to report and still do what
3 you're supposed to do but he didn't entirely disappear from
4 them. He got married, his wife basically said that there
5 wasn't a whole lot going on for her even in the Columbia
6 area, she moved to Tennessee. Mr. Cunningham has enrolled
7 in school in Tennessee, it is through East Tennessee State
8 University. He has gotten all of his paperwork, he has
9 gotten his pell grant, he's gotten his schedule, he's taking
10 a full load, school is supposed to start up on the 26th.
11 Your Honor, of course, I ask you to understand this is a
12 forgery case. He got his hands on -- I believe it was -- if
13 I remember correctly it was a family member's checkbook, but
14 he cashed a number of checks, owes \$2,000 essentially in
15 restitution. I have spoken with his wife and his sister who
16 are present here today and told them while it doesn't
17 necessary mean it will clear him it will go a heck of a long
18 way if they can pay off that restitution, my understanding
19 is they're prepared to do so. Now, I don't know what
20 they've got today but I think they're prepared to get that
21 matter resolved. I'm asking for something that I know Your
22 Honor is probably going to look at me cross-eyed about, but
23 I'm asking you to consider the fact that he hadn't gotten in
24 any more trouble in --

25 THE COURT: He's in enough trouble right now.

1 MR. FRICK: I understand, I understand that and I
2 understand the steep hill that I'm arguing on here. But he
3 really is in a whole lot better place than I have ever seen
4 him in, and it has been going on six or seven years that I
5 have been dealing with Mr. Cunningham almost every year
6 quite frankly, Your Honor, but it is always with new charges
7 and they always resulted from substance abuse problems.
8 He's clean, going to school, can get out of the community
9 which is exactly what he needed to do and what he did do.
10 So while he violated his probation that's probably what he
11 needed to do personally, he just went about it the wrong
12 way. Your Honor, I told his wife that you hear from folks
13 like me all of the time, that you're probably going to need
14 to hear from her so I would ask you to hear from her at this
15 time.

16 THE COURT: I will be happy to hear from you, ma'am, if
17 you want to stay anything stand up at that microphone, state
18 your full name for the record and I will be happy to hear
19 from you.

20 THE WITNESS: Good afternoon. My name is Beatrice
21 (phonetically) Crawford, I'm the wife of Osles Cunningham.
22 What I wanted to say to you this afternoon is simply that
23 over the past year and a half of knowing my husband that he
24 has changed. And what happened was Lancaster County did not
25 make it an easy situation for him to be in, and that's not

1 to anything that he had not done, we had talked about his
2 history when we met. However, Columbia, South Carolina to
3 me did not offer an opportunity for me. I am a veteran of
4 the United States Navy and I was fortunate enough to be able
5 to be hired by the Veterans Administration in Mountain Home,
6 Tennessee. And what I am humbly asking and sincerely asking
7 is that my husband is given the ability to make restitution
8 for the checks that he wrote and perhaps be allowed to --
9 well, not perhaps because I want him in Tennessee with me so
10 that he can start school, in a nutshell I -- it serves
11 two-fold. My understanding is that one of the situations is
12 once a person has started some change that the opportunities
13 in this area are very limited, in Tennessee he has been able
14 to find opportunities. As my husband he can go through the
15 Veterans Upper Bound Program and enroll in school and be
16 able and have an opportunity to make a better life for
17 himself and for us and to be able to be a valuable part of
18 the community that he now wants to participate in. And he
19 is a good person who has made very bad choices, and what I
20 am asking you is to allow us to pay his restitution and
21 allow him to be able to join me in Tennessee so that we can
22 build a life away from this area where he has in a sense not
23 built such a positive reputation.

24 THE COURT: Thank you, ma'am.

25 MR. FRICK: Osles, did you want to say anything?

1 THE DEFENDANT: It's correct I didn't report, it has
2 been a rough road for me probably since 1992. I've been
3 struggling with drug addiction for awhile now, I've been
4 clean but it doesn't change the fact that I didn't report.
5 Now, the part about them not knowing that I was in Columbia,
6 he knew. The part about me not paying any money, I've got
7 receipts, but it still doesn't the change the fact that I
8 did what they said I. Did, but there's nothing for me here
9 in Lancaster, nothing. I can't get a job here, nothing. If
10 I stay in Lancaster I'll be right back where I was left off
11 at, so I'm asking you can I go and be with my family so I
12 can continue to go to school and try to become a better
13 person?

14 THE COURT: How long has he been in jail?

15 MR. FRICK: He has been in our detention center for the
16 last 26 days, I think he's got a couple of more days -- he
17 was picked up in Charlotte -- in a license check in
18 Charlotte, there was a license checkpoint, they ran his
19 driver's license so he did a couple of days in Charlotte as
20 they were transferring his case. I think he has done about
21 30 days total. And I will point out if you see on the
22 sentencing sheet he spent a good deal of time in jail on
23 this case before we got the plea resolved. I think it is
24 accurate if you go by the arrest date and the plea date
25 because he never bonded out. Your Honor, I think he was

1 picked up around the last one there, which looks like it was
2 April 10th.

3 THE COURT: But you were incarcerated?

4 THE DEFENDANT: Right.

5 MR. FRICK: We talk about paying this \$2,000 in
6 restitution, that's not an empty promise in this case, they
7 have the funds to pay.

8 THE COURT: Has it been paid?

9 MR. FRICK: No, sir, it has not. I talked to his
10 sister Friday afternoon --

11 THE COURT: It is somewhat bothersome that he comes
12 back into court to make a determination on the case and it
13 was a responsibility he had when he was put on probation,
14 not when the responsibility of paying is determinative of
15 what happens today. It should have been paid before today,
16 Mr. Cunningham.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What's the most amount of time you've spent
19 at the department of corrections?

20 THE DEFENDANT: I spent 30 months, that's the most
21 amount of time I spent, 30 months.

22 THE COURT: Your records go back to 1989 when you got
23 your first breach of trust. And this is the fourth time he
24 has been on probation?

25 AGENT BURCH: Yes, sir.

1 THE COURT: I don't fault Mr. Frick or any lawyer for
2 asking for anything for their client, you know, I don't
3 fault anyone. If you don't ask you don't ever know.

4 MR. FRICK: I'll tell you quite frankly, Your Honor,
5 and I know you've been in this situation, I'm not just
6 asking because that's my job. I have known this man for
7 awhile and we --

8 THE COURT: I can see that, he's been in and out since
9 1989.

10 MR. FRICK: And that's why I tell you that he is a
11 different person than the person I talked to over at the old
12 courthouse while he was in, I think, in a SCDC jumpsuit at
13 that time and we were dealing with an old pending case and
14 he is a different man.

15 THE COURT: Well, and I don't doubt that, Mr.
16 Cunningham, I don't doubt that you made some changes. But
17 the problem is, you know, there is a consequence to every
18 decision we make and it is significant, I try to teach my
19 children that day in and day out. And you have had -- I
20 don't know if you have ever been in any drug treatment, your
21 lawyer has conveyed that you've had a drug problem and
22 that's what has kept you up here.

23 THE DEFENDANT: They never gave me the opportunity.

24 THE COURT: You got the opportunity, at some point
25 you've got to take the bull by the horns on that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How old are you, Mr. Cunningham?

3 THE DEFENDANT: Forty-two.

4 THE COURT: So in 1989 you were about 17 years old and
5 that's when it started?

6 THE DEFENDANT: Eighty-nine I should have been 19. I
7 was 19 in '89.

8 THE COURT: And I appreciate your wife being here, I
9 appreciate the service that she has given to this country
10 and her position, but if anybody knew what their
11 responsibility and obligations on probation were it was you.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: It's commendable you haven't been in
14 anymore trouble but you shouldn't have been.

15 THE DEFENDANT: Like I say, my agent knew I was in
16 Columbia.

17 THE COURT: She's not -- probation is not --

18 THE DEFENDANT: She was not my agent.

19 THE COURT: Probation is not your babysitter.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: They're not babysitters. And it is your
22 responsibility to jump through the appropriate hoops to
23 whether they knew or whatever. Based upon what I've heard
24 here today and based upon this Court's finding of a willful
25 violation of the terms and conditions I will revoke in full

1 and terminate, I think that is the appropriate thing to do
2 in this situation, Mr. Cunningham. If you've got those
3 opportunities that you have now you will have them when you
4 get out. There's a consequences to what has happened here
5 and the last thing I want to do is send you to jail but you
6 have made choices that puts me in this situation. Good luck
7 to you.

8 AGENT BURCH: Civil judgments for the fines, Your
9 Honor?

10 THE COURT: Yes, ma'am.

11 MR. FRICK: Your Honor, he is credited all of time he's
12 served?

13 THE COURT: Absolutely. He is entitled to every bit of
14 credit he has done from the time he was arrested until he
15 pled until the time he got arrested on this other stuff,
16 absolutely. Under the law he is entitled to that, he will
17 get credit for that.

18 (End of the hearing.)

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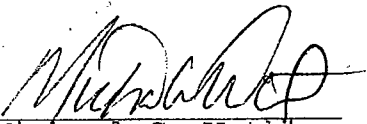
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25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in Court of General Sessions for
7 Lancaster County, South Carolina, on the 13th day of August,
8 2012.

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

11
12 November 4, 2012

13
14 
15 Michael C. Watkins
16 Court Reporter
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25

Form 15.1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Probation

ARREST WARRANT

Indictment Number 10-GS-12-00728, 10-GS-29-00916

Warrant Number W-29-11-0155

State Identification No. (SID) 00701592

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LANCASTER, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

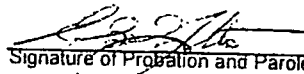
It appearing from the attached affidavit that there are reasonable grounds to believe that OSLES CUNNINGHAM, did on the 13 day of September, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 1, 2, 5, 7, 9, 10 and 11 of Cause # 10-GS-12-00728 and 10-GS-29-00916 as ordered in the Lancaster County Court of General Sessions on 11/18/2010 by the Honorable Judge Goldsmith.

Now, therefore, you are empowered and directed to arrest the said defendant and bring OSLES CUNNINGHAM 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. Done at LANCASTER, S. C. this 13 day of September, 2011.

County of LANCASTER


Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Ed Lockhart, who, first being duly sworn, deposes and says that OSLES CUNNINGHAM did within this County and State on the 13 day of September, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

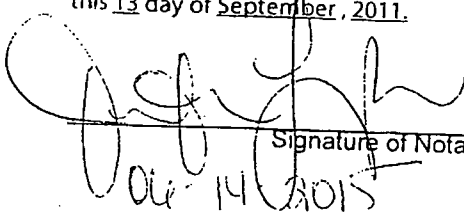
DESCRIPTION OF OFFENSE:

By violating conditions 1, 2, 5, 7, 9, 10 and 11 of Cause # 10-GS-12-00728 and 10-GS-29-00916 as ordered in the Lancaster County Court of General Sessions on 11/18/2010 by the Honorable Judge Goldsmith.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Cunningham failed to follow the advice and instructions of his Agent as he has failed to report as instructed. He missed a report on 7/11/11 and for August 2011. He last reported on 6/06/11. Failed to gain permission from his Agent before changing his residence. On 8/03/11, it was learned that Cunningham no longer stays at his reported address of 408 Rock Street when in fact he lives in Columbia, thereby absconding supervision. Failed to work diligently at an occupation having been unemployed since being placed on Probation and has the ability to work. Failed to pay Supervision Fees being \$300.00 in arrears at the issuance of process; failed to pay Public Defender Fund for Indictment 916 being \$126.00 in arrears at the issuance of process; failed to pay Drug Test Fee being \$20.00 in arrears at the issuance of process; failed to pay Restitution for Indictment 916 being \$180.00 in arrears at the issuance of process; failed to pay Restitution for Indictment 728 being \$60.00 in arrears at the issuance of process. He has never paid on any of his accounts.

Sworn to and Subscribed before me
this 13 day of September, 2011.


Signature of Notary Public

(L.S.)

My Commission Expires


Affiant

Address: P.O. Box 397
1926 Pageland Highway
LANCASTER, SC 29721
LANCASTER
USA
(803) 285-6906

WITNESSES

C.. Henry (CSD)

ARREST WARRANT NUMBER/DOA

M250999 (DOA -10-14-10)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-12-728

The State of South Carolina
County of Chester

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

THE STATE
vs.

Osles Cunningham, Jr.

Indictment for
Forgery Under \$5,000

SC Code: § 16-13-10(B)(2)
CDR Code: 2427
Class: Felony, F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on December 14, 2010, the Grand Jurors of Chester County present upon their oath:

FORGERY UNDER \$5,000

That Osles Cunningham, Jr. did in Chester County on or about April 2, 2010 falsely make, forge, or counterfeit or utter or publish as true a false, forged, or counterfeited writing or instrument of writing, to wit: check # 6561 drawn on the account of Blackmon's Construction Company in the amount of \$257.53 and presented for payment at 97 Express in violation of § 16-13-10(B)(2), *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Crump - 10-8115, 3351 3356 10859 10199

ARREST WARRANT NUMBER/DOA

Exhibit A (DOA 4-10-10)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JUL 22 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-29-916

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE
vs.

Osles Cunningham, Jr.

Indictment for
Forgery Under \$5,000

SC Code: § 16-13-10(B)(2)
CDR Code: 2427
Class: Felony, F

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

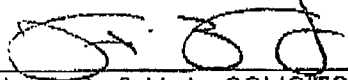
INDICTMENT

At a Court of General Sessions, convened on July 22, 2010, the Grand Jurors of Lancaster County present upon their oath:

FORGERY UNDER \$5,000

That Osles Cunningham, Jr., did in Lancaster County on the dates indicated on Exhibit A attached hereto and incorporated herein falsely make, forge, or counterfeit or utter or publish as true false, forged, or counterfeited writings or instruments of writing, to wit: checks drawn on various accounts in various amounts and presented for payment at various businesses, the check numbers, the account holders, the amounts of the checks, and the businesses all being indicated on Exhibit A attached hereto and incorporated herein in violation of Section 16-13-10(B)(2), *Code of Laws of South Carolina, (1976), as amended*.

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



 Douglas A. Barfield, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 10th, 2013



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

D. Craig Brown, Circuit Court Judge

THE STATE,

V.

OSLES CUNNINGHAM,

RESPONDED

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JUN 10 2013

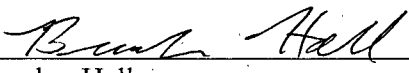
SC Court of Appeals

APPELLANT

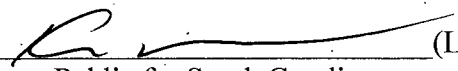
Appellate Case No. 2012-212762

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Matthew Buchanan, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250 this 10th day of June, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 10th day of June, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.