

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRED COLE, JR.,

APPELLANT

APPELLATE CASE NO. 2013-001139

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

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

Attorney for Appellant

J. BENJAMIN APLIN
Chief Legal Counsel

MATTHEW BUCHANAN
General Counsel
South Carolina Department of
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PO Box 50666
Columbia, SC 29250

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Attorneys for Respondent

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FEB 21 2014

SC Court of Appeals

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State of South Carolina.,) In the General Sessions Court
) of York
)
) Case No.: 2012-GS-46-00938
) Warrant No. W 46-12-166

County of York.)

South Carolina Probation.,)
 Pardon & Parole.,)
)
 Plaintiff.,)
)
 -v-)
)
 Fred Cole, Junior.,)
)
 Defendant.)

Transcript of Record
 Probation Violation

May 20, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Agent Shannon Myers
 Probation Pardon & Parole
 729 Justice Boulevard
 York, South Carolina 29745-7428
 803-628-3035
 For the Plaintiff

Ms. Toni Johnson
 Sixteenth Judicial Circuit
 Public Defender's Office
 1675-1E York Highway
 Moss Justice Center
 York, South Carolina 29745
 803-628-3031
Toni.johnson@yorkcountygov.com
 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

1

I-N-D-E-X - CON'T

2

E-X-H-I-B-I-T-S

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NO.DESCRIPTIONID.EVD.

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1 (COURT IN SESSION IN THE MATTER OF PROBATION PARDON
2 AND PAROL ON MONDAY, MAY 20, 2013 AT 10:53 A.M..)

3 THE BAILIFF: Fred Cole.

4 (BLACK MALE ENTERING COURTROOM.)

5 THE COURT: You are Fred Cole?

6 MR COLE: Yes, sir.

7 THE COURT: You represented by Ms. Johnson?

8 Is this your lawyer?

9 MR. COLE: Yes, sir.

10 THE COURT: You are charged in the arrest warrant with
11 violating probation. Looks like it was served on you on
12 May 6th of this year; is that correct?

13 MR. COLE: Yes, sir.

14 THE COURT: Although it was issued back on December
15 3rd of last year. It alleges that you violated the
16 sentence that I imposed on April 2nd of last year for a
17 drug violation. I gave you one year suspended on one year
18 probation.

19 Is that correct?

20 MR. COLE: Yes, sir, it is.

21 THE COURT: The allegations are set forth in the
22 arrest warrant affidavit that you have failed to follow
23 your agents advice and instructions; that you haven't
24 reported since last July, that you changed your address
25 without notifying your agent thereby being absconded.

1 Are those things true? Is that true?

2 MR. COLE: Yes, sir.

3 THE COURT: Those are substantial violations. I'll be
4 glad to hear from your attorney and then from you.

5 MS. JOHNSON: Thank you, Your Honor, may it please the
6 Court. Mr. Cole is twenty-six years of age, he is not
7 married; he does have a five year old son. He does have a
8 high school diploma, Your Honor. No college in his
9 background but he was hoping to attend school for welding.

10 I have had an opportunity to speak with him in
11 reference to the violations, Your Honor, and he indicated
12 to me that he did report in July and spoke with Forte. At
13 the time his agent was not in but obvious he did not report
14 so he does admit to that, Your Honor.

15 The change of address issue, he indicated that he's
16 staying with a friend's mother and that after a while she
17 told him that he could no longer reside with her there and
18 so he did admit, Your Honor, he's kind of been living
19 pillar to post in reference to that.

20 He indicated there were a couple of other violations
21 that Your Honor did not bring up if you want me to go into
22 those.

23 THE COURT: Well no because those are substantial in
24 and of themselves.

25 MS. JOHNSON: Okay.

1 THE COURT: But he does also - He failed to attend his
2 substance abuse counseling; he didn't do his weekend time.

3 MS. JOHNSON: The week end time, Your Honor, I've had
4 an opportunity to speak with the agent and that was going
5 to be ordered. They said that he did not attend that
6 meeting so he did not know about weekend time.

7 The lawful occupation, Your Honor, he indicated that
8 he was working for Jamieson which is a detailing. It was
9 on and off because business did slow down. He indicated
10 that they are picking back up again. And he does admit
11 that he is behind on his surcharges and his fines and fees,
12 Your Honor.

13 I've had an opportunity to speak with him; he's
14 actually received a sentence from the Family Court as well,
15 Your Honor, so he's going to be serving time out at the
16 Prison Farm. He receive six months I believe on that.

17 He has been incarcerated approximately fourteen days
18 and we wanted to ask, Your Honor, to consider a ninety-day
19 revocation on this and credit for time served. Terminate
20 his probationary sentence after that, Your Honor, and
21 convert any monies owed to a civil judgment.

22 THE COURT: Mr. Cole, anything you want to say?

23 MR. COLE: No, sir, Your Honor.

24 MS. JOHNSON: And normally, Your Honor, I know you do
25 not run concurrent and I ask that Your Honor run that

1 concurrent to his Family Court commitment.

2 THE COURT: He was on probation back in 2006.

3 Did he successfully complete it?

4 AGENT MYERS: Your Honor, I do not have that
5 information.

6 THE COURT: Did you complete that or did you have to
7 go serve time?

8 MR. COLE: I have agreed to serve time and terminate
9 my probation. That was an agreement that we -

10 THE COURT: Well, Ms. Johnson, the reason I'm
11 hesitating is, he's got a pretty good record and he just
12 hasn't done anything on probation. And I have no idea what
13 the Family Court has to do with it although I may have some
14 ideas.

15 I mean these are substantial violations. I'm gonna
16 have to revoke his probationary sentence and have him serve
17 his three year or whatever is left and I'll give him credit
18 for his time served.

19 MR. COLE: So how much time?

20 THE COURT: I'll run it concurrent but I don't know
21 how that works because he's going to SCDC on this and the
22 prison farm on the other, so to the extent that they can
23 run concurrent, I don't know how it works, but I'll run
24 them concurrent.

25 MS. JOHNSON: Can you reduce the amount of time, Your

1 Honor, perhaps six months and -

2 THE COURT: No. He's got a record. He's got one drug
3 offense that doesn't show any disposition so I can't
4 consider that. He hasn't done anything on this probation.
5 He apparently wasn't too happy with probation before
6 because he was on probation.

7 Anything you want to say?

8 MR. COLE: What I want to say, Your Honor, it's not
9 the problem with me not being able to do the probation.
10 It's just the financial and having somewhere to stay.
11 That's the only problem I been having with probation. I
12 mean I been a good probation candidate. I mean I don't get
13 in no trouble. I'm not a troublesome person at all.

14 THE COURT: They wouldn't know because you're not -
15 You never show up.

16 MR. COLE: I mean - But see, it was an altercation
17 going on with who my probation officer was because my
18 probation officer had quit and I didn't have any officer to
19 report to. They had me report to different folks so really
20 can't nobody tell you about me being on probation.

21 THE COURT: Well you just admitted that you hadn't
22 reported since July.

23 MR. COLE: I mean the last I remember I reported in
24 August. They saying I hadn't reported since July.

25 THE COURT: Well I made my ruling. Thank you.

1 Make any monetary obligations, if there are any, civil
2 judgment.

3 MS. JOHNSON: Thank you, Your Honor.

4 - END OF TRANSCRIPT OF RECORD. -
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of May, 2013.

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

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 7/16/2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

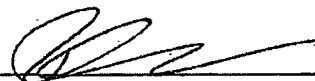
INDICTMENT

At a Court of General Sessions, convened on February 16, 2012, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

On or about December 2, 2011, the Defendant, Fred Sylvester Cole, Jr. , did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine base (crack). Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the 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.



ASSISTANT SOLICITOR

WITNESSES

RHPD/ Watson

ab

ARREST WARRANT NUMBER

J-134499

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-46-00938

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

February 16, Term 2012

THE STATE

vs.

FRED SYLVESTER COLE, JR.

Indictment for

**POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE**

SC Code: 44-53-375
CDR Code: 3014

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Fred S. Cole Jr.
Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Possession of cocaine
base 1st offense

Fred S. Cole Jr.
Defendant

Witness:
Angela Dixon et al.
C.C.C. PLS. AND G.S.

OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK
STATE VS. plea pile
Fred Sylvester Cole

INDICTMENT/CASE#: 2012 GS4600938

AKA: _____
Race: BLACK Sex: M Age: 25
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Rock Hill, SC 29730
DL#: _____ SID#: _____

A/W#: J134499
Date of Offense: 12/3/2011
S.C. Code §: 44-53-0375 (B) (1)
CDR Code #: 3014

SENTENCE SHEET

ORIGINAL

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Drugs/possession of less than one gram of meth. or cocaine base 1st ☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3009
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. sc (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____
McNerney, Rebecca SC Bar# _____ Defendant 73035 Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 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 _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 1

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 by the State Department of Corrections.
☐ 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
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
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/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>780.00</u>

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

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aminah Hardy
SCCA/217 (03/2011)

Presiding Judge John H. Hays
Judge Code: 2019
Sentence Date: 4-2-12

Form 16.1- Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Probation

ARREST WARRANT

Indictment Number 12-GS-46-00938

Warrant Number W-46-12-0166

State Identification No. (SID) 01706429

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

It appearing from the attached affidavit that there are reasonable grounds to believe that FRED SYLVESTER, JR. COLE, did on the 3 day of December, 2012 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation Violation concurrent to Section 24-21-430 in that the Defendant has violated the conditions of his/her probation sentence as imposed by Judge Hayes in the April 2, 2012 term of General Sessions Court holden in York County, York South Carolina.

Now, therefore, you are empowered and directed to arrest the said defendant and bring FRED SYLVESTER, JR. COLE 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 ROCK HILL, S. C. this 3 day of December, 2012.

County of YORK

STATE OF SOUTH CAROLINA

Shannon Myers (L.S.)
Signature of Probation and Parole Agent

AFFIDAVIT

Personally appeared before me, one Shannon Myers, who, first being duly sworn, deposes and says that FRED SYLVESTER, JR. COLE did within this County and State on the 3 day of December, 2012, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Probation Violation concurrent to Section 24-21-430 in that the Defendant has violated the conditions of his/her probation sentence as imposed by Judge Hayes in the April 2, 2012 term of General Sessions Court holden in York County, York South Carolina.

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:

Subject has failed to follow the advice and instructions of his Supervising Agent by failing to report since July 2012 to the probation office even after letters were sent to his home; failed to notify Agent in change of address thereby absconding supervision after two home visits were attempted at two different addresses; failed to work diligently at a lawful occupation; failed to attend substance abuse counseling; failed to do weekend time after it was ordered in June 2012; failed to pay fees being \$400 in arrears on supervision (8 payments) and failed to pay surcharge fees being \$320 in arrears (4 payments.) Such actions constitute willful violations of conditions 1, 2, 5, 7, 9, 10 and special conditions of the probationary agreement.

Sworn to and Subscribed before me
this 3 day of December, 2012.

Shannon Myers
Affiant

Cheryl L. Martin (L.S.)
Signature of Notary Public

April 7, 2018
My Commission Expires

Address: 1070 HECKLE BLVD.
SUITE 201, BOX 14
ROCK HILL, SC 29732
YORK
USA
(803) 909-7282

RETURN

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

[Signature]

on the 6 day of May, 2013.

Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF

YORK

THE STATE

against

FRED SYLVESTER, JR. COLE

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 12/3/2012

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Shannon Myers

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name FRED SYLVESTER, JR. COLE

Address [REDACTED]
ROCK HILL, SC 29730

Phone (803) 980-3790

Sex Male Race Black Height 600

Weight 155 Birth date [REDACTED]

Social Security Number [REDACTED]

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

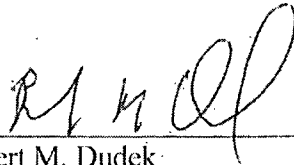
Amount

Surety

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."

This 21st day of February, 2014.



Robert M. Dudek
Chief Appellate Defender

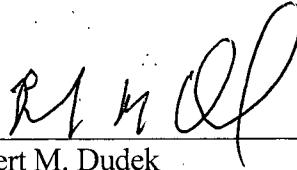
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

This 21st day of February, 2014.



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRED COLE, JR.,

APPELLANT

APPELLATE CASE NO. 2013-001139

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 South Carolina Department of Probation, Parole, and Pardon Services this 21st day of February, 2014.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of February, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021

RECEIVED

FEB 21 2014

SC Court of Appeals