

IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA

RECEIVED

OCT 14 2019

SC Court of Appeals

STATE OF SOUTH CAROLINA,
vs Respondent,
GARY L. THOMAS,
Appellant.

NOTICE OF MOTION AND
MOTION FOR APPOINTMENT
OF COUNSEL ON APPEAL

PLEASE HEREBY TAKE NOTICE THAT APPELLANT MOVES THIS HONORABLE COURT FOR THE APPOINTMENT OF COUNSEL AT STATE EXPENSE, TO BRIEF THE ISSUES ON APPEAL:

1. THE FAILURE OF THE STATE TO AFFORD APPELLANT due process PRIOR TO REVOCATION, DENYING HIM A HEARING COMPLIANT WITH THE REQUIREMENTS OUTLINED IN MORRISSEY V. BREWER, 408 U.S. 471, 480-90 (1972) AS EXTENDED TO PROBATIONERS BY BRAGDON V. SCARPELLI, 411 U.S. 778 (1973); AND

2. THE FAILURE OF THE STATE TO CREDIT TOWARD APPELLANT'S SENTENCE THE 589 DAYS THAT APPELLANT SPENT ON PROBATION FROM DECEMBER 1, 2017 TO JULY 12, 2019; AND

3. THE RESULTING CONSECUTIVE SENTENCES OF 589 DAYS OF PROBATION AND THREE YEARS INCARCERATION FOR HIS SINGLE OFFENSE CONVICTION OF 2nd DOMESTIC VIOLENCE, WHICH HAS A STATUTORY MAXIMUM TERM OF "NOT MORE THAN THREE YEARS." (§16-25-20(c) S.C. CODE ANNOTATED)

THIS MOTION IS BASED ON APPELLANT'S RIGHT OF APPEAL AND HIS STATUS AS AN INDIGENT, INCARCERATED PERSON.

THIS MOTION IS ACCOMPANIED BY TRANSCRIPTS OF PROCEEDINGS, IN LIEU OF THE WRITTEN ORDER REVOKING PROBATION, AS APPELLANT HAS NEVER RECEIVED SAID ORDER.

RESPECTFULLY SUBMITTED THIS — DAY OF OCTOBER, 2019.



GARY L. THOMAS, 310751
TRENTON CORR. INST.
84 GREENHOUSE RD
TRENTON, NJ 08647

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 GARY Z. THOMAS,)
)
 DEFENDANT.)
 _____)

PROBATION HEARING

TRANSCRIPT OF RECORD

JULY 12, 2019
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE LAWTON McINTOSH

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

PROBATION AGENT HURST

ATTORNEY FOR DEFENDANT:

MAURICE McNAB, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

11

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
-----------	--------------------	-----------	-----------------

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** All right. Raise your right hand. Raise
2 your right hand. Do you swear or affirm to tell the truth,
3 the whole truth and nothing but the truth?

4 **MR. THOMAS:** Yes, sir.

5 **THE COURT:** You're Gregory Zachariah Thomas?

6 **MR. THOMAS:** Yes, sir.

7 **THE COURT:** I need you to speak louder, please.

8 **MR. THOMAS:** Yes, Your Honor.

9 **THE COURT:** Mr. Thomas, have you read or had read to
10 you the report of your alleged probation violation?

11 **MR. THOMAS:** I'm sorry?

12 **THE COURT:** Have you read or had read to you the report
13 of your alleged probation violation?

14 **MR. THOMAS:** Yes, sir.

15 **THE COURT:** You understand why you are here?

16 **MR. THOMAS:** Yes, sir.

17 **THE COURT:** Do you agree or do you disagree that you
18 wilfully violated the terms of your violation?

19 **MR. THOMAS:** I disagree.

20 **THE COURT:** You disagree?

21 **MR. THOMAS:** Yes, sir.

22 **THE COURT:** Okay. Tell me why you disagree.

23 **MR. THOMAS:** I -- it's hard to explain, really. I've
24 got report dates when I reported to. I was at the probation
25 office for an hour. I emailed by probation officer and told

1 her I was there.

2 There's a clipboard you have to sign in and they call
3 you by the board. And I waited an hour from 3:45 to 4:45.
4 And it's like the end of the day. I didn't know she left
5 early. So I emailed her on my way out of the parking lot
6 and she said she was going to violate me for not reporting.
7 So ...

8 **THE COURT:** Yes, sir.

9 **MR. McNAB:** Your Honor, this is a copy of the email
10 exchange that Mr. Thomas is referring to between him and the
11 agent.

12 **THE COURT:** What does it show?

13 **MR. McNAB:** It shows that he was there and that there
14 was some -- an acknowledgment by the agent that he was
15 there. It says ---

16 **THE COURT:** So the agent didn't work quickly enough for
17 your client, and so he left?

18 **MR. McNAB:** He says that he had to get back to work,
19 Your Honor. That's not what I would have recommended, but
20 that's what happened, Your Honor.

21 **THE COURT:** Well, you know, he has prior failure to
22 reports and he knows what he's supposed to be doing. He's
23 just hard headed. Officer, tell me what else about him,
24 please.

25 **PROBATION AGENT:** Regarding the violation, Your Honor?

1 **THE COURT:** Yes, sir.

2 **PROBATION AGENT:** As far as the violation, he failed to
3 report, failed to refrain from using illegal substances,
4 testing positive for methamphetamines, amphetamines and
5 marijuana.

6 Then in a warrant he failed to report on December 31st,
7 and as instructed for a drug test, failed to make truthful
8 report about having address -- about his address, having
9 never lived at the said address. Let's see. Sheriff's
10 office was called out earlier that morning to place the
11 offender on trespass notice as he was not supposed to be
12 using that address, nor be on the property, failing to pay
13 supervision fees.

14 And then the most recent warrant, he failed to report
15 again as instructed, failed to refrain from using illegal
16 substances, refraining from violating federal, state or
17 local law, having in his possession marijuana,
18 methamphetamine as supported by his arrest, and a home visit
19 conducted on March 30th of this year where the agent
20 discovered a substance in his bedroom in which the offender
21 then attempted to grab the evidence from the agent knocking
22 the evidence out of her hand, failing to follow direct order
23 from the agent after having been given instructions to exit
24 the house after knocking the illegal substance out of her
25 hand resulting in the agent having to pull her weapon and

1 demand several times for the offender to exit the home
2 causing the agent to dispatch Pickens County Sheriff's
3 Office and on-call GPS agents with the probation department
4 for assistance and failing to follow advice and instructions
5 of the agent.

6 **THE COURT:** This is his fifth probation case?

7 **PROBATION AGENT:** His fifth probation case, Your Honor.

8 **THE COURT:** All right.

9 **PROBATION AGENT:** He knows what he's supposed to be
10 doing.

11 **THE COURT:** Anything further, counsel?

12 **MR. McNAB:** Your Honor, I think that the defendant
13 would want to explain the -- his position for the Court.

14 **THE COURT:** Sure. I'll be glad to hear from you, if
15 you want to say anything you want to say.

16 **MR. THOMAS:** As far as the failure to report in Laurens
17 County, I did fail to report. I -- I was living in low
18 income housing with my fiancé. I've got a domestic violence
19 conviction. I can't be on the lease. And I lived there for
20 several months.

21 And my agent came out, he was my agent at the time, he
22 talked to management or something and brought them --
23 brought it to their attention that I had a domestic violence
24 charge. And so my fiancé was told two weeks -- she had to
25 get out or she's going to get kicked out. So I became

1 homeless then.

2 And Agent Hurst said I reported -- maybe a month later
3 Agent Hurst told me if I didn't have -- on Wednesday
4 afternoon Agent Hurst told me if I didn't have a address by
5 Friday morning, I'm going to go to jail. And I didn't
6 report that day, you know.

7 And I called him. I did call him after he put a
8 warrant out on me and asked if I checked myself into rehab
9 would, you know, would he -- would he lift the warrant and
10 just, you know, let me -- let me do my rehab program. And,
11 you know, he said, no, I just had to come and go to jail.

12 And then it cost me fifteen hundred dollars (\$1500.00)
13 to bond out of jail. And that was like our rent money. And
14 we lost -- and we lost our home and couldn't get another
15 place to rent.

16 That -- I'm sorry. That was -- I went to an
17 administrative hearing on that. And I don't remember what
18 -- I don't hear very well. I don't remember all what we
19 said, but I knew she -- she let that go and told me that my
20 behind fees, let that go to -- and that I transferred to --
21 I got my probation transferred to Greenville.

22 And my fiancé's sister's house -- and she said that --
23 when I told her, you know, they could come search anytime,
24 they could come through whenever, she said, no, didn't want
25 that. So she said I could no longer live there. So I had

1 to move out.

2 And by the time my agent got around to doing a home
3 visit, they'd already told me to stay away, don't bring him
4 around. So I actually sat in the yard waiting for their --
5 my agent to show up. And the police came out and put me on
6 trespass notice. So I had to leave.

7 She never called me, didn't ask me, you know, what's
8 what, wouldn't meet me on the outside of the property. I
9 don't know why she -- she -- I'm supposed to be home during
10 a home visit. He's told me that. So I expected she'd call
11 me when she'd show up and I'm not there, and she never did.

12 And as far as the drug testing, I did, I smoked some --
13 I was smoking pot a few months back. And I've got a lot
14 going on. I just got stressed out. And I'm clean now.

15 **THE COURT:** All right, sir. I'm going to find that Mr.
16 Thomas has wilfully violated the terms of his probation and
17 he's failed to report to meetings, he's failed to report for
18 his drug tests, he's failed to report to his agent on March
19 26th, 2019, he had a physical confrontation with his agent,
20 and I'm going to revoke him in full. Good luck to you.

21 **PROBATION AGENT:** Thank you, sir.

22 **MR. THOMAS:** Your Honor, if I could say something ---

23 **THE COURT:** No, sir, ---

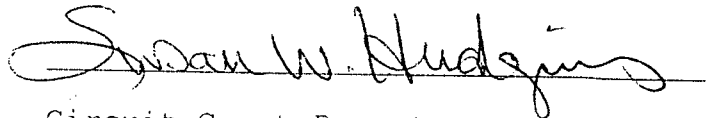
24 **MR. THOMAS:** --- one of these reports says December
25 31st ---

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 12th day of July 2019.

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

August 24, 2019

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in dark ink and is positioned above a horizontal line.

Circuit Court Reporter

Greenville County Sheriff's Office

Civil Division

601 E. McBee Ave., Suite 101
Greenville, South Carolina 29601
Phone (864) 282-0008 Fax (864) 235-9171



Party Requesting Service:

FERRIS HARVLEY
Attn: Ferris Harvley
PO Box 14693
Greenville, SC 29610

AFFIDAVIT OF SERVICE

Greenville County Probation, Parole, & Pardon Services

State of SC, et. al., Plaintiff(s)

vs.

Gary Z Thomas, et. al., Defendant(s)

Case No: 2017-GS-39-2623

Name of Deputy: Kathryn L. Monahan, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 15-Aug-2019 11:30 am

Place of Service: at 301 University Ridge Suite 6500, City of Greenville, State of SC

Documents Served: the undersigned served the documents described as:
Notice of Motion and Motion for New Hearing/Motion to Vacate Order Revoking Probabtion Without Affording I

Affidavit of Gary Z Thomas

Affidavit of Ferris Harvley

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:
Greenville County Probation, Parole, & Pardon Services

By delivering them into the hands of

Robert Arms

FOS

Signature of Deputy: Subscribed and sworn to before me this

16th day of **August**, 2019.

Bauba M. McCulley
Notary Public for South Carolina

My Commission Expires: 7/2/24

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Kathryn L. Monahan

Kathryn L. Monahan



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

August 29, 2019

Post Office Box 8002
100 South Main Street
Anderson, SC 29622-8002
Phone: (864) 260-4059
Fax: (864) 224-6320
lmcintoshj@sccourts.org

Honorable Harold P. Welborn, Jr.
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671-0215

Dear Mr. Welborn:

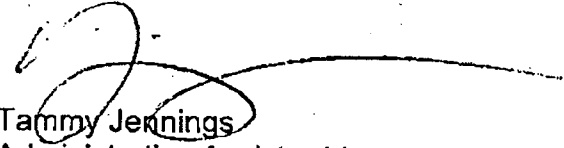
Please find enclosed an original Order which has been signed by Judge McIntosh in the following case:

State of SC v. Gary Z. Thomas
Number: 2017-GS-39-2623

Please file this in your office and provide certified copies to the attorneys of record pursuant to your customary procedure.

Thank you for your assistance in this matter.

Sincerely,


Tammy Jennings
Administrative Assistant to
R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

tj
Enclosure

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOR THE TENTH JUDICIAL CIRCUIT

2019 SEP -3 P 1:20

State of South Carolina)

Plaintiff)

Vs.)

Gary Z. Thomas,)

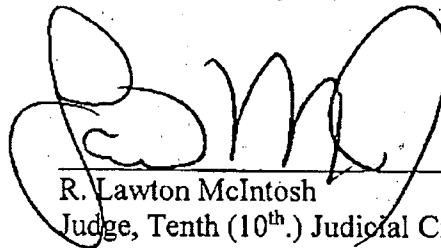
Defendant)

ORDER DENYING MOTION

2017A3910100440
Case Number: 2017-GS-39-2623

The Notice of Motion and Motion for New Hearing/Motion to Vacate Order Revoking Probation Without Affording Defendant a Hearing (Rule 29, SCRCP; Rule 59, SCRCP; Rule 60, SCRCP) filed August 13, 2019 in case number 2017-GS-39-2623 is DENIED without the necessity of a hearing. Transcripts of this hearing is attached and incorporated herein and referenced thereto.

Anderson, SC
August 29, 2019



R. Lawton McIntosh
Judge, Tenth (10th) Judicial Circuit

RECEIVED

OCT 14 2019

SC Court of Appeals

OCTOBER 4, 2019

RE STATE V. THOMAS, 2017 GS 89 26 23
Appeal from Probation Revocation
and Appeal from Underlying Conviction

DEAR CLERK

PLEASE RECEIVE THE ENCLOSURES NOTING
THAT I AM SIMULTANEOUSLY MAILING COPIES
THEREOF TO:

PA WELBORN, CLERK
214 E. MAIN ST
PICKENS, SC 29671

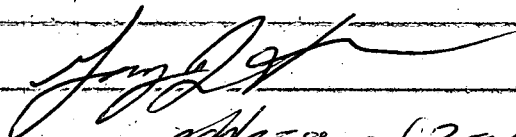
SC INDIGENT DEFENSE
HERVEY YOUNG
P.O. Box 11433
Columbia, SC 29211-11433

MATTHEW BUCHANAN,
GENERAL COUNSEL, SCDPPAS
P.O. Box 50666
COLUMBIA, SC 29250

BY REGULAR INSTITUTIONAL
MAIL

Sincerely

GA-01.03, 12.2


ADDRESS ON REVERSE

GRAY Z. THOMAS 310751
TRENTON C.T. 3D27
84 GREENHOUSE RD
TRENTON SC 29847

ENCLOSED: Transcript of Record; MAILED TO
OTHER PARTIES
Order Denying Motion; "
Notice of Appeal; ~~SEE~~
Notice of Motion and Motion for
Appointment of Counsel on Appeal
8-15-19 Affidavit of Service of
Motion w/ Affidavits (SERVED ON OTHER
PARTIES) (AS INDICATED
ABOVE

HANDWRITTEN
PLEADINGS WILL
NOT BE COPIED
PER SCDC

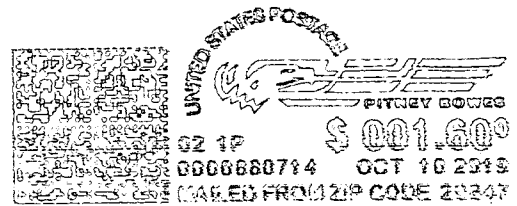
POLICY
GA-Q1.03, 12.2

PLEASE RETURN FOUR (4) FILED COPIES OF THE
HANDWRITTEN

NOTICE OF APPEAL AND
MOTION FOR APPOINTMENT OF COUNSEL
ON APPEAL

SO THAT I MAY SERVE THE SAME ON THE PARTIES
LISTED ABOVE.

GARY THOMAS 310757 3D27
TRENTON CORRECTIONAL INSTITUTION
84 GREENHOUSE ROAD
TRENTON, SC 29847



RECEIVED
OCT 14 2019
SC Court of Appeals

SC COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211