

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN JOSEPH HART,

APPELLANT

APPELLATE CASE NO 2018-000827

RECORD ON APPEAL

RECEIVED
DEC 17 2018
SC Court of Appeals

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

MATTHEW BUCHANAN
General Counsel
South Carolina Department of Probation, Parole
and Pardon Services
Post Office Box 50666
Columbia, SC 29250

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF PROBATION REVOCATION HEARING HELD APRIL 20, 2018.....1

PROBATION REVOCATION ORDER12

SENTENCE SHEET.....13

INDICTMENT.....14

CERTIFICATE OF COUNSEL16

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)	

State of South Carolina,)	
)	
v.)	Case No. 16-GS-04-2518
)	
John Joseph Hart,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 20, 2018, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County; attended by counsel as follows:

APPEARANCES:

Joshua Nesbitt, Probation Agent
DEPARTMENT OF PROBATION
Appearing for State of South Carolina

Heather Scalzo, Esq.
Appearing for Defendant

Vivian H. Cross
Circuit Court Reporter –10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 CLERK: John Hart, come around.

2 (WHEREUPON DEFENDANT SWORN)

3 THE COURT: You are John Joseph Hart?

4 DEFENDANT: Yes, sir.

5 THE COURT: Mr. Hart, have you read or
6 had read to you the report of your alleged
7 probation violation?

8 DEFENDANT: Yes, sir.

9 THE COURT: You understand why you are
10 here?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you agree or do you
13 disagree that you willfully violated the
14 terms of your probation?

15 DEFENDANT: I disagree.

16 THE COURT: Okay. Tell me what you
17 have to say in your defense.

18 MS. SCALZO: Your Honor, ---

19 THE COURT: I want to hear from him,
20 Ms. Scalzo.

21 MS. SCALZO: Yes, sir.

22 DEFENDANT: Pretty much the whole
23 violation hinges on the new case.

24 THE COURT: Sir?

25 DEFENDANT: Pretty much everything

State of South Carolina v. John Joseph Hart
Case No. 16-GS-04-02518 et. al.
Hearing of April 20, 2018
Before The Honorable R. Lawton McIntosh

1 they're saying hinges on the new charge.
2 I had time -- I had -- our court date was
3 supposed to be on the 14th of March. And,
4 uh, when -- in the meantime there was a new
5 charge and my parole officer asked me to, I
6 guess, come in. I did not come in on the
7 first but, I mean, at the same time the court
8 date was supposed to be on the 14th and I had
9 other obligations. And I, uh, ---

10 THE COURT: Let me stop you right
11 there, Mr. Hart.

12 DEFENDANT: Yes, sir?

13 THE COURT: This report says that
14 contrary to your probation that you made
15 contact with the victim in this case; not
16 only contact but violent contact.

17 DEFENDANT: Correct, and that's the new
18 charges that I got.

19 THE COURT: I understand that. I
20 understand the charge.

21 DEFENDANT: Yes, sir. And it's not
22 true, sir. And I've not been with her since
23 that day in court. I've not contacted -- we
24 was living in the house together and my P.O.
25 said that we needed to be separated until we

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 could go to court and find out if it was a,
2 uh, a legitimate issue -- I didn't understand
3 all the terminology.

4 I left the residence and in the meantime
5 there was threats made and accusations.
6 Until I could prove in court that I didn't
7 say ---

8 THE COURT: Tell me about it, please,
9 sir.

10 AGENT NESBITT: All right. Thank you,
11 Your Honor, may it please the court.

12 He is correct. I went out and did a home
13 visit, he was in the house with the victim.
14 I did not realize that it was the victim at
15 first.

16 He came in to report, I think, later that
17 week and I said, 'Look, your sentence sheet
18 says that based on a Family Court Order
19 there's to be no contact unless specified by
20 the Family Court.'" So I said, 'We have to
21 double-check and see if there is a Court
22 Order saying that you can have contact.' I
23 said, 'Until then, you need to find another
24 residence.'

25 So he provided me with another residence

State of South Carolina v. John Joseph Hart

5

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 and all was well and good, that's fine. But
2 then I got a phone call from his mom a few
3 days later saying that the police had come.
4 I got the incident report from the Sheriff's
5 Office saying that they had gone out there,
6 he'd gone back to the house and started
7 basically assaulting the victim in the home,
8 etc.

9 THE COURT: All right. He didn't do
10 mental health or substance abuse?

11 AGENT NESBITT: No, sir. He was
12 referred.

13 THE COURT: He just didn't do it?

14 AGENT NESBITT: Well, he was referred
15 to substance abuse. For the mental health,
16 they asked us to send him to have an
17 assessment done. I told him to reach out,
18 contact them, find out when they wanted him
19 to go; to follow through on that, and to let
20 me know. He did not do that.

21 DEFENDANT: I had two weeks to do that,
22 sir, before the new charges were put on me.
23 I had two more weeks after that charge was
24 put on me to -- to call the people and try to
25 arrange the thing. I'm more than willing --

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 I'm more than willing to have the substance
2 abuse evaluation or the mental/psychological
3 evaluation done. I'm more than willing to do
4 that.

5 THE COURT: All right. Ms. Scalzo,
6 anything that you want to say?

7 MS. SCALZO: Both of the violations stem
8 from this pending charge which he adamantly
9 denies.

10 THE COURT: Well, let me just tell you
11 this. I'm not considering the charge but I
12 am considering the fact that he was told to
13 have no contact, which he admitted having --
14 right now.

15 DEFENDANT: No, sir. Oh no, sir.

16 THE COURT: Sir, ---

17 DEFENDANT: I told them that day ---

18 THE COURT: Do not argue with me.

19 Okay? I'm going to let your lawyer ---

20 DEFENDANT: Yes, sir.

21 THE COURT: If he didn't do any
22 substance abuse counseling, and he obviously
23 has some mental health issues that he needs
24 to take care of and he didn't do that.
25 That's what I am considering. I am not

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 considering the charges.

2 And he's got two criminal domestic
3 violence charges pending. I mean, he's on
4 probation for that. Then he's got one
5 pending. He is certainly a danger to his
6 victim out there.

7 MS. SCALZO: Your Honor, on the pending,
8 he adamantly denies that.

9 THE COURT: Right. Well, ---

10 MS. SCALZO: We were going to ask for
11 him to be continued ---

12 THE COURT: I am not going to continue
13 him today. Okay?

14 MS. SCALZO: Yes, sir.

15 THE COURT: Yes, sir, I'll be glad to
16 hear from you.

17 DEFENDANT: I apologize, sir.

18 THE COURT: That's all right.

19 DEFENDANT: Uh, I mean I -- this is
20 very serious because my wife has took off to
21 Kentucky and in the meantime -- the first
22 CDV, too, that I'm out on probation right now
23 as we're speaking, I was told -- I was under
24 the impression that everything was okay. She
25 was in Kentucky then as well when that charge

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

8

1 was put on me. I pled out to get out of jail
2 on that charge. Now, in the meantime she
3 come back to South Carolina from Kentucky
4 with my daughter and we lived together.
5 There was a prior parole office -- Mister --
6 I forget his name, sir, but there was another
7 fellow that was on my case. He knew that we
8 lived together for a year, that'd we'd moved
9 out of my mother's house into a house of our
10 own. Then we moved back into my mother's
11 house because of unfortunate circumstances
12 with my brother. Then this guy comes and
13 tells me that I need to leave. I left at
14 that point and give him the other address.

15 Now, this is fabricated lies saying that
16 I assaulted this lady and now she's took off
17 again, because I was told to leave.

18 In the past I went back to her after the
19 P.O. leaves, or the law leaves, and I lay
20 there and wait to go to court and everything
21 like I was not supposed to.

22 This time, because I don't want to go to
23 the penitentiary in the state of South
24 Carolina and I don't want to be locked up no
25 more, and I was told -- I'm just being honest

State of South Carolina v. John Joseph Hart

10

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

1 here. It is a justification. But my
2 understanding from Mr. Hart was that -- that
3 he had gotten some kind of permission to go
4 see his brother, who was in poor health. I
5 wasn't aware that that was a violation.

6 THE COURT: Okay. Anything further?

7 AGENT NESBITT: No, Your Honor.

8 THE COURT: Ms. Scalzo, anything
9 further?

10 MS. SCALZO: No, Your Honor.

11 THE COURT: I find ---

12 AGENT NESBITT: I'm sorry, Your Honor,
13 I do -- he did go through an administrative
14 hearing and I've got the report, (tendering).

15 THE COURT: Thank you. I'm going to
16 find Mr. Hart has willfully violated the
17 terms of his probation in that he lived with
18 the victim in this case, -- I know he's got
19 pending charges -- in that he failed to go to
20 substance abuse counseling or mental health.
21 I'm going to revoke him in full. Give him
22 credit for time. While he is incarcerated,
23 I'm going to recommend that they do a mental
24 health evaluation and, if necessary, any
25 treatment associated with that evaluation.

State of South Carolina v. John Joseph Hart

Case No. 16-GS-04-02518 et. al.

Hearing of April 20, 2018

Before The Honorable R. Lawton McIntosh

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Good luck to you.

DEFENDANT: What just happened, sir?

THE COURT: She will explain it to you.

(HEARING CONCLUDED)

A TRUE COPY

APR 24 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Anderson

Indictment Number:

STATE VS

2016 - GS - 04 - 02518

John Joseph Hart

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

AKA:

Name of Original Offense: Domestic Violence 2nd degree

Race: White

Sex: Male

Original AWW#: 2016A0410101120

DOB:

Date of Original Offense: 10/17/2016

SSN:

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

SID#: 02266372

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

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

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:

[X] 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 second degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

[X] Financial Obligations: Order satisfies: [X] Department fees (arrears/balance) Civil judgment: [] Department fees [X] Fines and other fees (arrears/balance) [] Fines and other fees [] Restitution (and 20%) (arrears/balance) [] Restitution (and 20%)

[X] Additional Conditions ordered by the Court:

Revoke in full. Recommend mental health evaluation. Time satisfies fees, fines, and monies. Credit pre hearing time 42 days.

[X] 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. 42 days

[] The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time). 42 days

[X] 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

Presiding Judge [Signature] 10th 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

[Signature] Anderson City SC

ANDERSON

JOHN JOSEPH HART

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

White Sex: M Age: 34
1982 SS#:
Wellington St.
Anderson, SC 29624
DL# SID# SC02266372

SENTENCE SHEET

Up to 3 yrs
or 1/2 \$21500-
\$5K

WHR

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

CONVICTED OF or PLEADS

3YRS susp 51 days 3yrs
prob., n.c., s.a.m.

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

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

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

WHEREFORE, the Defendant is committed to the State Department of Corrections or 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:
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 TIS
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
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Ordered PTUP days/hours
Obtain GED

A TRUE COPY
Public Service Employment
APR 26 2018
Richard S. Shirley
ANDERSON CLERK OF COURT

Table with 2 columns: Description and Amount. Includes items like \$14-1-206 (Assessments 107.5%), \$14-1-211 (A)(1)(Conv. Surcharge) \$100, \$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, \$14-1-212 (Law Enforce. Funding) \$25, \$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) \$.

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: No contact with victim except
as allowed by Family Court
Order: DAC

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.

TOTAL
Clerk of Court/Deputy Clerk: Richard S. Shirley
Court Reporter: V. Cross
SCCA/217 (07/2016)

Presiding Judge:
Judge Bar ID:
Sentence Date: 12/7/16

DOCKET NO. 2016-GS-04-02518

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

JOHN JOSEPH HART

COMMITMENT

12.7.16:RT

INDICTMENT FOR

DOMESTIC VIOLENCE, 2ND DEGREE

SC Code: § 16-25-0020(A) and 16-25-0020(C)
CDR Code: 3812

WITNESSES

Anderson Co. Sheriff's Office
Kevin Looney

ARREST WARRANT NUMBER

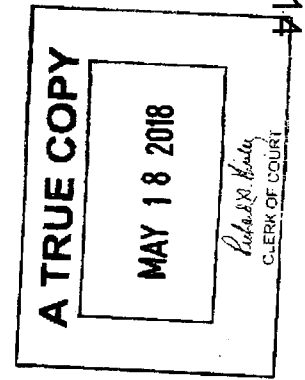
2016A0410101120

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Grand Jury
Date:



STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Anderson County present upon their oath:

DOMESTIC VIOLENCE, 2ND DEGREE

The defendant, John Joseph Hart, did on or about October 17, 2016, in Anderson County, South Carolina, commit the crime of Domestic Violence in the 2nd Degree, in that the defendant did cause physical harm or injury or offer or attempt to cause physical harm or injury to Crystal Gail Hart, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril. And, in addition, moderate bodily injury results or the act was accomplished by means likely to result in moderate bodily injury; or the defendant has one prior conviction of domestic violence in the prior 10 years; or, in the process of committing a Domestic Violence 3rd Degree, one of the following resulted: the offense was committed while violating a protection order. All in violation of Section 16-25-20(A) and (C) of the South Carolina 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.

Kristin W. Reeves
 KRISTIN W. REEVES
 ASSISTANT SOLICITOR

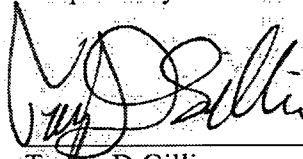
TRUE COPY
 MAY 18 2018

Richard D. Hines
 CLERK OF COURT

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,



Taylor D Gilliam
Appellate Defender

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

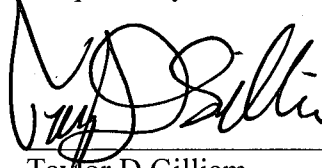
ATTORNEY FOR APPELLANT

This 17th day of December, 2018.

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,



Taylor D Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT.

This 17th day of December, 2018.

RECEIVED
DEC 17 2018
SC Court of Appeals