

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Michael G. Nettles, Circuit Court Judge

RECEIVED

FEB 27 2019

S.C. SUPREME COURT

JAMIE A. MAKUPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001377

APPENDIX

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY E. JAMES
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 JAMIE MAKUPSON,) 2013-GS-42-2321
8 DEFENDANT.)

9
10 June 17th, 2016
11 Spartanburg, South Carolina

12
13 B E F O R E :
14 THE HONORABLE R. KEITH KELLY, Judge.

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

16
17 JAMIE MAKUPSON
18 Pro Se

19
20
21 PAMELA E. GREEN
22 Circuit Court Reporter
23 Seventh Judicial Circuit
24
25

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(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

1

2

3

THE COURT: Madam Clerk.

4

5

(WHEREUPON, Mr. Makupson was placed under oath at this time.)

6

THE COURT: Sir, you're Mr. Jamie Anthony Makupson?

7

MR. MAKUPSON: Yes, sir.

8

9

THE COURT: Mr. Makupson, have you had a chance to look at this 1106 report?

10

MR. MAKUPSON: No, sir.

11

THE COURT: You haven't seen this?

12

MR. MAKUPSON: No, sir.

13

14

THE COURT: You don't know what they're saying that you did or didn't do?

15

MR. MAKUPSON: No, sir, I just---

16

THE COURT: Agent?

17

18

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THE PROBATION AGENT: Your Honor, he was presented with a copy of the citation at -- when he was in my office and then subsequently escorted out because he became so belligerent while standing there trying to explain the citation. He did come into my office on Tuesday. We didn't have an appointment. He said he was there simply because he was there, there for Court. Said he didn't get an attorney cause he didn't feel like it and would be representing himself.

1 Mr. Makupson is aware of the violations as he screamed
2 them to me while we were waiting for you to come out to the
3 bench.

4 THE COURT: Oh.

5 sir, they're saying that you missed, missed a report
6 in December.

7 MR. MAKUPSON: No. No, sir, that's not true.

8 THE COURT: Okay.

9 MR. MAKUPSON: It's wrote down that I went to every,
10 every report I suppose to went to.

11 THE COURT: Okay.

12 MR. MAKUPSON: Every last one of them.

13 THE COURT: What about changing your address without
14 consent?

15 MR. MAKUPSON: Never. My address still the same and
16 she called my mother right after I left and told my mother
17 she wasn't gonna violate me because my mother told her that
18 I was just leaving the house to come up there to see her.

19 THE COURT: All right. What about testing positive
20 for cocaine or---

21 MR. MAKUPSON: Your Honor?

22 THE COURT: Sir?

23 MR. MAKUPSON: Under the, under the guidelines, I don't
24 have a drug charge. I wasn't recommended to do drug tests
25 on my sentencing sheet. It wasn't recommended that I do

5
1 drug tests on my sentence, and when I asked for a second one
2 because I thought that the stick was wrong, they denied me a
3 second one.

4 I'm entitled to two drug tests at the same time, right?

5 THE COURT: Sir, they say you tested positive on March
6 8th and March 15th with THC, cocaine, and---

7 MR. MAKUPSON: I, I only been tested once. Once when I
8 first started and once in March. And when I asked for the
9 second stick, you entitled to a second stick, Your Honor,
10 if, if the one -- if you feel like the one stick is wrong,
11 you're entitled to ask for another urine test to do it
12 again. They denied me that.

13 THE COURT: Okay. Well, the court finds that you
14 violated your probation, your probation by testing positive,
15 by missing reports, and by changing your address---

16 MR. MAKUPSON: How---

17 THE COURT: ---without consent.

18 MR. MAKUPSON: How is that so, sir?

19 THE COURT: He's revoked in full.

20 THE PROBATION AGENT: Thank you, sir.

21 MR. MAKUPSON: And what is full, sir?

22 What is the sentence?

23 What's my sentence?

24 THE PROBATION AGENT: Five years.

25 MR. MAKUPSON: Five years.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of 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 Spartanburg County, South Carolina, on the 17th day of June, 2016.

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

July 25th, 2017



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
)
 Full name and prison number (if any) of Applicant:)
Jamie A. Makupson, 281398)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS
2017-CP-42-1808

APPLICATION FOR
 POST-CONVICTION RELIEF

2017 MAY 22 AM 11:53
 HOPE BLAICH

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw C.I., 4848 Goldmine Hwy., Kershaw, S.C. 29067
2. Name and location of Court which imposed sentence Spartanburg County, Court of General Session, Spartanburg, S.C. 29304
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-42-02321, Assault & Battery, 1st
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6/28/13
 - (b) _____

[Handwritten signature]

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Guilty Plea is non-appealable in most instances

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

CLERK OF COURT
2017 MAY 22 AM 11:33
M. HOPE BLACKLEY

(a) Probation Court Lacked Subject Matter Jurisdiction

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Memorandum of Law In Support of

(b) Application

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

2017 MAY 22 AM 11:33
M. HOPE BLACKLEY

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) first-time challenged

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

2017 MAY 22 AM 11:33
M. HOPE BLACKLEY

OFFICIAL COURT REPORTER

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? N/A
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

probation revocation reversed

20. Are you now under sentence from any other court that you have not challenged?

No

2017 MAY 22 AM 11:33
 M. HOPE BLACKLEY
 SEARCHED
 SERIALIZED
 INDEXED
 FILED

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Jamie A. Makupson being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jamie A. Makupson

SWORN to and subscribed before me this 2nd day of May, 2017

Cheryl R. West (L.S.)
Notary Public

My Commission Expires: Jan 27, 2025

2017 MAY 22 AM 11:34
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jamie A. Makinson hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jamie A. Makinson
Applicant

SWORN or affirmed to and subscribed before me this
2 day of May, 2017

Charles R. Leet
Notary Public

My Commission Expires: Jan 27 2025

2017 MAY 22 AM 11:34
H. HOPE BLACKLEY

Dear Clerk

Please find enclosed my Application For Post Conviction Relief with a "Memorandum Of Law", a "Motion To Address All Issues", A Motion For Transcripts And Case Documents" And "Certificate Of Service"

Please file an original, serve a copy to the Attorney General, and provide me with some verification of the filing(s).

I thank you for your kind services

Respectfully,

~~Jamie A. Makupson~~

Jamie A. Makupson, 291398
Kershaw, C.I. HB-273
4848 Gold Mine Hwy
Kershaw S.C. 29067

2017 MAR 22 AM 11:34
M. JONES
CLERK

STATE OF SOUTH CAROLINA

State Of South Carolina
County Of Spartanburg

In The Court Of Common Pleas

2017-CP-42-1808

Jamie Makupson, 281398,

Applicant,

v.

State Of South Carolina,

Respondent,

Memorandum Of Law In Support Of Application

Subscribed This 2nd Day Of MAY, 2017.

M. HOPE BLACKLEY

2017 MAY 22 AM 11:34

CLERK OF COURT
SPARTANBURG COUNTY

Respectfully Submitted,
~~Jamie M. Makupson 281398~~
Jamie Makupson, 281398
Kershaw C.I., HB-273
4848 Goldmine Highway
Kershaw, S.C. 29067

Issue A: Did The Court Of General Sessions Have Subject Matter Jurisdiction To Revoke Applicants Probation?

Issue B: Did Applicant Waive His Right To Counsel At The Probation Revocation Hearing?

Statement OF The Case

Applicant was indicted by the Spartanburg Grand Jury upon Indictment No: 2013-GS-46-02321 for Assault and Battery 1st. Applicant originally pled guilty on June 28, 2013, where he was sentenced to ten (10) years suspended to five (5) years incarceration, with five (5) years probation. Applicant was charged with violating the conditions of probation and Judge R. Keith Kelly revoked and terminated probation and ordered Applicant to serve the remainder in The Dept. of Corrections. The Probation Officer was Andrea Hannah Price for the State and the Applicant proceeded without Counsel. Applicant did not Appeal the guilty plea or probation revocation.

Now comes the Applicant, who ~~is~~ challenges the unlawful revocation of his probation.

Issue A: Did the Court of General Sessions Have Subject Matter Jurisdiction to Revoke Applicant's Probation?

According to the Revocation Order it states that a Citation dated 4-4-16 was issued. It also state that; After hearing the evidence and being duly advised, in the presence of the defendant (now Applicant), I find the above named defendant has violated the following condition(s) of probation. Then the order states in perentheses: (List by number or indicate special conditions as provided in the Affidavit.) Then the Court or Probation Officer List as follows: 1, 2, 3, 5, 7, 9, 10 3 special conditions. This statement would have us to believe that citation with an Affidavit was issued in this case, when in fact, there

17
 WAS no citation or Affidavit issued before hearing or served nor presented to the Applicant in this case. Applicant has never seen a citation nor warrant up to this date. Without the Citation or Probation Warrant rendered the Court is without Subject Matter Jurisdiction and the revocation is void. Now comes the Law Analysis in regards

LAW ANALYSIS

Revoking the suspension of a sentence can be done only by a Court of competent jurisdiction before which the defendant has been revoked on a warrant charging a violation of the conditions of probation. Sanders V. Mac Dougall, 244 S.C. 160, 135 S.E. 2d 836 (S.C. 1964). Subject Matter Jurisdiction to revoke probation is conferred on the General Sessions Court by either the issuance of a warrant or the issuance of a probation violation citation and Affidavit in lieu of a warrant. State V. Lee, 350 S.C. 125, 564 S.E. 2d 372 (2002). Failure to comply with warrant procedures set forth in S.C. Code, § 24-21-450 deprives Court of Subject Matter jurisdiction to revoke probation. Gray V. State, 276 S.C. 684, 281 S.E. 2d 226 (1981). In this case, the Court could not have had subject matter jurisdiction to revoke Applicants probation, even if a warrant was issued for probationer's (Applicants') arrest for a violation of a condition of probation where he was not served with a warrant because the States failure to serve Applicant with warrant also violates the requirement. State V. Richburg, 304 S.C. 162, 403 S.E. 2d 315 (1991); State V. Brunson, 274 S.C. 220, 262 S.E. 2d 44 (1980). However it is the Applicant's contention that there was no "warrant" or "citation" at the time of the revocation hearing and the revocation of probation sentence was annulity. Revocation of probation must be reversed where Probation Judge proceeded without the benefit of the probation warrant required by § 24-21-450; State V. Loftin, 276 S.C. 48, 275 S.E. 2d 575 (1981). The Probation Revocation should be reversed.

Issue B: Did Applicant Waive His Right To Counsel At The Probation Revocation Hearing?

In this case, Applicant had to proceed Pro-Se as no Counsel was appointed to represent nor were the required procedures or steps taken by the Court to

18

Assure that the Applicant was making a free and Voluntary Waiver of his right to Counsel and that he understood the dangers of Self-Representation. Now comes this Law Analysis.

Applicants' Right to Counsel Arises from the Due Process Clause under the Fifth and Fourteenth Amendments rather than the Sixth in the Probation Revocation context. Gagnon V. Scapelli, 411 U.S. 778, 93 S.Ct. 1756 (1973); Turner V. State, 384 S.C. 451, 682 S.E.2d 792 (2009). Also South Carolina probationer's Right to Counsel in a probation revocation hearing is grounded in our case Law and court rules. The Probationer must be informed that they have a right to counsel and he must make a willing and knowing waiver of Counsel before he can be allowed to represent himself and his probationary sentence can be revoked. Huckaby V. State, 305 S.C. 331, 408 S.E.2d 242 (1991). Rule 602(a) SCACR; Barlet V. State, 288 S.C. 481, 483, 343, S.E.2d 620, 621 (1986).

The record did not demonstrate that Applicant was sufficiently aware of the dangers of self-representation to make an informed decision to proceed pro se during probation revocation hearing, and thus Applicant did not validly waive his right to Counsel. Stevenson V. State, 337 S.C. 23, 522 S.E.2d 343 (1999); Bridwell V. State, 306 S.C. 518, 413 S.E.2d 30 (1992); Salley V. State, 306 S.C. 213, 410 S.E.2d 921 (1991)

Conclusion

For the legal reasons stated within this "Memorandum of Law" the Probation's Court Decision should be reversed with Probationary Sentence vacated.

Respectfully Submitted
Jamie A. Makupson 281398
 Jamie A. Makupson
 Kershaw C. I H-B-273-T
 4848 Gold Mine Hwy.
 Kershaw S.C. 29067

(3)

State of South Carolina
County of Spartanburg

Jamie A. Makupson 281398
Applicant

V.
State of South Carolina
Respondent,

In The Court of Common Pleas ^{page 4 of 10}

2017-CP-42-1868

Motion to Address All issues

Now comes the Applicant, Jamie Makupson 281398 who Ask this Honorable Court to require any/all attorneys involved in this Post Conviction Relief Action and any ~~amendments~~ amendments thereof, to be meticulous in the preparation of any "order" prepared in this matter. Specifically, the Applicant request that each and every issue within the "PCR" Application and "Memorandum In Support" therefore be addressed in the Court in the Conclusion of this matter.

The Applicant request this motion be granted pursuant to S.C. Code, § 17-27-80. Citing, Pruitt V. State, 423 S.E. 2d 127 (1992); Bryan V. State, 493 S.E. 2d 500 (1990).

Wherefore, Applicant request the Motion be granted.

Respectfully Submitted,
Jamie A. Makupson 281398
Jamie A. Makupson, 281398
Kershaw C.I. HB-273-T
~~_____~~
4848 Gold Mine Hwy.
Kershaw, S.C. 29067

SPARTANBURG COUNTY
2017 MAY 22 AM 11:30
M. HOPE BLACKLE

State of South Carolina
County of Spartanburg

Jamie Makupson, 281398
Applicant

V.
State of South Carolina,
Respondent

Page 5 of 6

In the Court of Common Pleas

2017-CP-42-1808

Motion For Transcript(s)
And Case Document(s)

Now comes the Applicant, Jamie A. Makupson, 281398, who respectfully moves the Court to order the Respondent(s), the Clerk of Court, and former Defense Counsel, at Government expense, the true and correct copies of transcript(s) of guilty plea transcript held on 6/24/13 and of the Probation Revocation Hearing held on 6/17/16, and all Court and Case documents in regards to State-V-Makupson, Indictment No: 2013-GS-42-02321 for Assault and Battery 1st. In support of this Motion, the Applicant state the following:

- 1) In order to prove his claims, if proven, would entitle Applicant to relief;
- 2) Without all transcripts and all court and case documents, Applicant will be precluded from presenting to the Court anything other than conclusory allegations based upon his memory of these proceedings which at this late date, has been distorted by time;
- 3) Without the expediate production of the transcript and case documents, Applicant will be rushed, in difficult environment, to research and prepare any further grounds in support of his Application, to be amended, which will ~~not~~ guarantee him full and fair proceedings in this matter.

This Motion is made pursuant to ~~South Carolina~~ Rule 32, S.C. S.Ct.R; Citing, In re Clerk, 300 S.E. 2d 595 (1989); In Matter of Haddock, 283 S.C. 116, 321 S.E. 2d 601 (1984) U.S. V. Tyles, 9F 2d 420 (4th Cir. 1991) U.S V. Tucker, 114 S.C. 1230 (1994); Horton V. State, 411 S.E. 2d 223 (S.C. 1991); and further citing in support of this Motion; South Carolina Code of Law, § 14-5-10, 14-17-510, 14-17-530, 14-17-540; 14-17-570; and see, Evans V. State,

Wherefore, Applicant respectfully moves this Honorable Court to require the Respondent, the Clerk of Court and former Defense Counsel, to, conjunctively, provide Applicant with true copies and correct of his guilty plea and probation Revocation proceeding(s) transcript(s) and Court and Case Document(s).

Respectfully Submitted Jamie Makupson 281398
Jamie A. Makupson 281398, Kershaw C.I HB-223
4848 Goldmine Hwy., Kershaw S.C. 29067

(5)

State Of South Carolina }
County Of Spartanburg }

In The Court Of Common Pleas

2017-CP-42-1808

Jamie Makupson, 281398, }
Applicant, }

v.

State Of South Carolina, }
Respondent, }

Certificate Of Service

I, the above-stated Applicant, Jamie Makupson, 281398, do hereby under oath and penalty of perjury certify that I have served an "Application For Post Conviction Relief", a "Memorandum Of Law In Support Of Application", a "Motion To Address All Issues", a "Motion For Transcript and Court Documents" with a Certificate Of Service upon the below listed parties upon the same date.

(1) Mr. Alan Wilson
Attorney General
P.O. Box 11549
Columbia, SC 29211

(2) M. Hope Blackley, Clerk Of Court.
For Spartanburg County
Spartanburg County Court House
180 Magnolia Street, P.O. Box 3483
Spartanburg, S.C. 29304-3483

Sworn To Before Me, This
2 Day Of May, 2017.
Notary Public For South Carolina.
[Signature]
My Commission Expires:
Jan 27, 2023

Respectfully Submitted,
Jamie A. Makupson
Jamie Makupson, 281398
Kershaw C.I., HB-273
4848 Goldmine Hwy
Kershaw, S.C. 29067

SPARTANBURG COUNTY
MAY 22 AM 11:11
M. HOPE BLACKLEY

State Of South Carolina
County Of Spartanburg

In The Court Of Common Pleas

2017-CP-42-1808

Jamie Makupson, 281398,

Applicant,

v.

State Of South Carolina,

Respondent,

Memorandum Of Law In Support Of Application

Subscribed This 2nd Day Of MAY, 2017.

2017 MAY 22 AM 11:34
H. JONES CLERK/CALDER

Respectfully Submitted,
~~Jamie K. Makupson 281398~~
Jamie Makupson, 281398
Kershaw C.I., HB-273
4848 Goldmine Highway
Kershaw, S.C. 29067

Issues Presented

Issue A: Did The Court Of General Sessions Have Subject Matter Jurisdiction To Revoke Applicants Probation?

Issue B: Did Applicant Waive His Right To Counsel At The Probation Revocation Hearing?

Statement OF The Case

Applicant was indicted by the Spartanburg Grand Jury upon Indictment No: 2013-GS-46-02321 for Assault and Battery 1st. Applicant originally pled guilty on June 28, 2013, where he was sentenced to ten (10) years suspended to five (5) years incarceration, with five (5) years probation. Applicant was charged with violating the conditions of probation and Judge R. Keith Kelly revoked and terminated probation and ordered Applicant to serve the remainder in The Dept. of Corrections. The Probation Officer was Andrea Hannah Price for the State and the Applicant proceeded without Counsel. Applicant did not Appeal the guilty plea or probation revocation.

Now comes the Applicant, who ~~is~~ challenges the unlawful revocation of his probation.

2017 MAY 22 11:34
SHERIFF CLERK

Issue A: Did the Court of General Sessions Have Subject Matter Jurisdiction to Revoke Applicant's Probation?

According to the Revocation Order it states that a Citation dated 4-4-16 was issued. It also state that; After hearing the evidence and being duly advised, in the presence of the defendant (now Applicant), I find the above named defendant has violated the following condition(s) of probation. Then the order states in perentheses: (List by number or indicate special condit AS provided in the Affidavit.) Then the Court or Probation Officer List as follo 1,2,3,5,7,9,10 3 special conditions. This statement would have us to believe that citation with an Affidavit was issued in this case, when in fact, there

Was no citation or Affidavit issued before hearing or served nor presented to the Applicant in this case. Applicant has never seen a citation nor warrant up to this date. Without the Citation or Probation Warrant rendered the Court is without Subject Matter Jurisdiction and the Revocation is void. Now comes the Law Analysis in regards

LAW ANALYSIS

Revoking the suspension of a sentence can be done only by a Court of competent jurisdiction before which the defendant has been revoked on a warrant charging a violation of the conditions of probation. Sanders V. MacDougall, 244 S.C. 160, 135 S.E. 2d 836 (S.C. 1964). Subject Matter Jurisdiction to revoke probation is conferred on the General Sessions Court by either the issuance of a warrant or the issuance of a probation violation citation and Affidavit in lieu of a warrant. State V. Lee, 350 S.C. 125, 564 S.E. 2d 372 (2002). Failure to comply with warrant procedures set forth in S.C. Code, § 24-21-450 deprives Court of Subject Matter jurisdiction to revoke probation. Gray V. State, 276 S.C. 634, 281 S.E. 2d 226 (1981). In this case, the Court could not have had subject matter jurisdiction to revoke Applicant's probation, even if a warrant was issued for probationer's (Applicant's) arrest for a violation of a condition of probation where he was not served with a warrant because the State's failure to serve Applicant with warrant also violates the requirement. State V. Richburg, 304 S.C. 162, 403 S.E. 2d 315 (1991); State V. Brunson, 274 S.C. 220, 262 S.E. 2d 44 (1980). However it is the Applicant's contention that there was no "warrant" or "citation" at the time of the revocation hearing and the revocation of probation sentence was annulity. Revocation of probation must be reversed where Probation Judge proceeded without the benefit of the probation warrant required by § 24-21-450; State V. Loftin, 276 S.C. 48, 275 S.E. 2d 575 (1981). The Probation Revocation Should be reversed.

Issue B: Did Applicant Waive His Right To Counsel At The Probation Revocation Hearing?

In this case, Applicant had to proceed Pro Se as no Counsel was appointed to represent nor were the required procedures or steps taken by the Court to

Assure that the Applicant was making a free and Voluntary Waiver of his right to Counsel and that he understood the dangers of Self-Representation. Now comes this Law Analysis.

Applicants' Right to Counsel Arises from the Due Process Clause under the Fifth and Fourteenth Amendments rather than the Sixth in the Probation Revocation context. Gagnon v. Scapelli, 411 U.S. 778, 935 Ct. 1756 (1973); Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009). Also South Carolina probationer's Right to Counsel in a probation revocation hearing is grounded in our case Law and court rules. The Probationer must be informed that they have a right to counsel and he must make a willing and knowing waiver of Counsel before he can be allowed to represent himself and his probationary sentence can be revoked. Huckaby v. State, 305 S.C. 331, 408 S.E. 2d 242 (1991). Rule 602 (a) SCACR; Barlet v. State, 288 S.C. 481, 483, 343, S.E. 2d 620, 621 (1986).

The record did not demonstrate that Applicant was sufficiently aware of the dangers of self-representation to make an informed decision to proceed pro se during probation revocation hearing, and thus Applicant did not validly waive his right to Counsel. Stevenson v. State, 337 S.C. 23, 522 S.E. 2d 343 (1999); Bridwell v. State, 306 S.C. 518, 413 S.E. 2d 30 (1992); Salley v. State, 306 S.C. 213, 410 S.E. 2d 921 (1991)

Conclusion

For the legal reasons stated within this "Memorandum of Law" the Probation's Court Decision should be reversed with Probationary Sentence vacated.

Respectfully Submitted
Jamie A. Makupson 281398
 Jamie A. Makupson
 Kershaw C. I H-B-273-T
 4848 Gold Mine Hwy.
 Kershaw S.C. 29067

(3)

On April 4, 2016 a probation citation was issued for Applicant for violations of probation.

The affidavit stated that Applicant was to be arrested for the following reasons:

1. Failure to report as instructed having missed an office visit;
2. Failure to refrain from changing residence without prior consent of the Agent;
3. Failure to refrain from the use of controlled substances having tested positive for THC, cocaine, and opiates on 3/8/16 and 3/15/16;
4. Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment;
5. Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation;
6. Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation;
7. Failure to pay one time \$20 drug test fee;
8. Failure to follow the advice and instructions of the supervising Agent;
9. Failure to comply with special condition of anger management counseling.

On June 17, 2016, the Applicant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. Judge Kelly revoked Applicant's probation and required him to serve his remaining five year sentence. Applicant did not appeal his sentence.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Did the Court of General Sessions have subject matter jurisdiction to revoke Applicant's probation?"
 - a. "According to the revocation order it states that a citation dated 4-4-16 was issued. It also state that, 'after hearing the evidence and being duly advised, in the presence of the defendant (now Applicant), I find the above named defendant has violated the following conditions of probation. ... This statement would have us believe that citation with an affidavit was issued in this case, when in fact, there was no citation or affidavit issued before hearing or served nor presented to the Applicant in this case. Applicant has never seen a citation nor warrant up to this date. Without the citation or probation warrant rendered this court is without subject matter jurisdiction and the revocation is void."
2. "Did Applicant waive his right to counsel at the probation revocation hearing?"
 - a. "In this case, Applicant had to proceed *pro se* as no counsel was appointed to represent nor were the required procedures or steps taken by the court to assure that Applicant was making a free and voluntary waiver of his right to counsel and that he

understood the dangers of self-representation.”

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's probation revocation transcript, Applicant's probation records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Any claims stemming from Applicant's guilty plea hearing should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty on June 26, 2013. Therefore, any claims stemming from his guilty plea were due Thursday, June 26, 2014. The current application was filed May 22, 2017 – well after the

one-year statutory filing period expired. Therefore, any claims stemming from Applicant's guilty plea hearing should be summarily dismissed as barred by the statute of limitations.

IV.

Applicant's allegation of lack of subject-matter jurisdiction should be dismissed as Respondent is entitled to judgment as a matter of law. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant claims that there was no citation or affidavit issued regarding his arrest for probation violations. The record clearly indicates that there was a probation citation with an affidavit signed by Applicant's probation officer, Hanna Price, on April 4, 2016 and served on April 13, 2016. Therefore, Applicant has failed to present any evidence to refute the record that he was served with the probation citation and affidavit in addition to failing to show that the probation revocation court did not have the authority to preside. Therefore, the Respondent requests that this allegation be summarily dismissed as there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

V.

Applicant alleges that he was denied the right to have counsel appointed during his probation hearing and the court failed to explain to him the disadvantages of proceeding *pro se*, thus denying him the right to an appeal. In criminal cases, defendants have the right to waive counsel; however, the trial court has discretion to determine if that waiver was a knowing and intelligent waiver. State

v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (2009) (citing State v. Thompson, 355 S.C. 261-62, 584 S.E.2d at 134-35 (2003)). Specifically, in addition to reviewing the entire record, the court also looks to ten factors in order to determine if the defendant has sufficient background to understand the dangers of self-representation. Bryant, 383 S.C. 410, 415, 680 S.E.2d 11, 13 (2009). Such factors include, but not limited to, whether the defendant was previously involved in criminal trials, whether he knew the nature of the charge and of the possible penalties, and whether he knew he would be required to comply with trial rules of procedure. Id. This analysis aids the court in determining whether the defendant had sufficient background to waive counsel or was apprised of his rights by another source. Id.

In regard to waiving counsel in a probation revocation hearing, the court first looks to the exchange between the court and the probation agent during the hearing. Id. at 416, 680 S.E.2d at 14. If the court does not explicitly address the specific dangers and disadvantages of proceeding *pro se* as required by Ferretta¹, the Court notes that the next inquiry is whether the defendant signed a probation notice by his probation officer, acknowledging in part that he may have an attorney represent him and if he could not afford one, one would be appointed on his behalf. Bryant, 383 S.C. at 410, 416-17, 680 S.E.2d 11, 14. The probation notice typically states that it is the defendant's responsibility to ensure that his or her witnesses and attorney appear at the hearing. Id. In Bryant, the court held that though the court did not explicitly warn the defendant of the dangers and disadvantages of self-representation, because the defendant signed a probation notice prior to the hearing informing her of her rights and considering her extensive experience in the criminal justice system, specifically in probation court, as well as previous representation for the underlying charges,

¹ Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

she had a sufficient background to waive counsel and was apprised of her rights by some other source. Id at 417, 680 S.E.2d at 14.

In the case at bar, Applicant signed a notice of probation, informing him of his rights, on April 13, 2016. This notice expressly stated that he may have an attorney represent him, and that if he could not afford one, one would be appointed for him. Therefore, the responsibility fell on Applicant to make arrangements to hire an attorney to appear at the probation revocation hearing, if desired, as acknowledged in the signed probation notice. Because Applicant was apprised of his rights by his probation agent through the signed probation notice and he was familiar with the criminal justice system as evidenced by his conviction for the crime for which he was sentenced to probation, Applicant possessed sufficient background to waive his right to counsel and was apprised of his rights through his probation agent.

Respondent moves for summary dismissal of all allegations stemming from Applicant's claim of denial of appointed representation as they are conclusively refuted by the record and therefore, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because any claims related to Applicant's guilty plea hearing were filed after the statute of limitations had expired, the record conclusively refutes the allegation that the probation revocation court lacked subject matter jurisdiction and that Applicant was denied counsel at his probation revocation hearing.

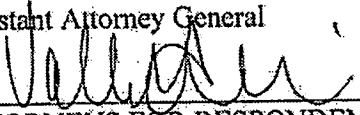
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFERY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 7, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2017-CP-42-1808

JAMIE ANTHONY MAKUPSON,)
#281398,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

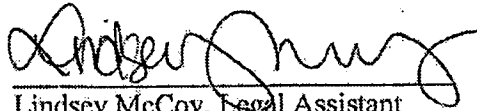
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 7th day of December, 2017.


Lindsey McCoy, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS)
IN THE SEVENTH JUDICIAL CIRCUIT)

Jamie A. Makupson, #281398,)
Applicant,)

Case No.: 2017-CP-42-1808)

v.)

CONDITIONAL ORDER ON)
DISMISSAL)

State of South Carolina,)
Respondent.)

2018 JAN 10 AM 9:20
M. HOPE BLANCHETT

This matter comes before the Court by way of an application for post-conviction relief filed by Jamie A. Makupson (Applicant) on May 22, 2017. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2013, the Spartanburg County Grand Jury indicted Applicant for assault and battery, first degree (2013-GS-42-2321). Applicant was subsequently indicted in June 2013 for assault and battery, second degree (2013-GS-42-2919) and threatening life, person, or family of public official, teacher, or principal (2013-GS-42-2920).

Robert B. Hall, Esquire, represented Applicant. Alexandria Denise Lyles, Esquire, prosecuted the case. On June 28, 2013, Applicant pleaded guilty as indicted to all charges before the Honorable J. Mark Hayes, II. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for assault and battery, first degree, provided that upon the service of five years, the balance was suspended with probation for five years, three years for assault and battery, second degree, and five years for threatening the life, person or family of public official, teacher, or principal. Applicant did not appeal his conviction

or sentence.

On April 4, 2016 an probation citation was issued for Applicant for violations of probation. The affidavit stated that Applicant was to be arrested for the following reasons:

1. Failure to report as instructed having missed an office visit;
2. Failure to refrain from changing residence without prior consent of the Agent;
3. Failure to refrain from the use of controlled substances having tested positive for THC, cocaine, and opiates on 3/8/16 and 3/15/16;
4. Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment;
5. Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation;
6. Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation;
7. Failure to pay one time \$20 drug test fee;
8. Failure to follow the advice and instructions of the supervising Agent;
9. Failure to comply with special condition of anger management counseling.

On June 17, 2016, the Applicant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. Judge Kelly revoked Applicant's probation and required him to serve his remaining five year sentence. Applicant did not appeal his sentence.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Did the Court of General Sessions have subject matter jurisdiction to revoke Applicant's probation?"
 - a. "According to the revocation order it states that a citation dated 4-4-16 was issued. It also state that, 'after hearing the evidence and being duly advised, in the presence of the defendant (now Applicant), I find the above named defendant has violated the following conditions of probation. ... This statement would have us believe that citation with an affidavit was issued in this case, when in fact, there was no citation or affidavit issued before hearing or served nor presented to the Applicant in this case. Applicant has never seen a citation nor warrant up to this date. Without the citation or probation warrant rendered this court is without subject matter jurisdiction and the revocation is void."
2. "Did Applicant waive his right to counsel at the probation revocation hearing?"
 - a. "In this case, Applicant had to proceed *pro se* as no counsel was appointed to represent nor were the required procedures or steps taken by the court to assure

2018 JAN 16 AM 9:20
M. HOPE BLACKLEY

that Applicant was making a free and voluntary waiver of his right to counsel and that he understood the dangers of self-representation.”

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the probation revocation transcript, Applicant's probation records, the application and Respondents return and motion to dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds that any claims stemming from Applicant's guilty plea hearing should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 667 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty on June 26, 2013. Therefore, any claims stemming from his guilty

2018 JAN 10
M. H. P. C. 2018
APR 9

plea were due Thursday, June 26, 2014. The current application was filed May 22, 2017 -- well after the one-year statutory filing period expired. Therefore, any claims stemming from Applicant's guilty plea hearing are summarily dismissed as barred by the statute of limitations.

Subject Matter Jurisdiction

The Court further finds Applicant's first allegation of lack of subject matter jurisdiction must be summarily dismissed because Respondent is entitled to judgment as a matter of law. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant claims that there was no citation or affidavit issued regarding his arrest for probation violations. The record clearly indicates that there was a probation citation with an affidavit signed by Applicant's probation officer, Hanna Price, on April 4, 2016 and served on April 13, 2016. Therefore, Applicant has failed to present any evidence to refute the record that he was served with the probation citation and affidavit in addition to failing to show that the probation revocation court did not have the authority to preside. Therefore, this Court finds that this allegation be summarily dismissed as there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

Right to Probation Revocation Counsel

Applicant alleges that he was denied the right to have counsel appointed during his probation hearing and the court failed to explain to him the disadvantages of proceeding *pro se*,

thus denying him the right to an appeal. In criminal cases, defendants have the right to waive counsel; however, the trial court has discretion to determine if that waiver was a knowing and intelligent waiver. State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (2009) (citing State v. Thompson, 355 S.C. 261-62, 584 S.E.2d at 134-35 (2003)). Specifically, in addition to reviewing the entire record, the court also looks to ten factors in order to determine if the defendant has sufficient background to understand the dangers of self-representation. Bryant, 383 S.C. 410, 415, 680 S.E.2d 11, 13 (2009). Such factors include, but not limited to, whether the defendant was previously involved in criminal trials, whether he knew the nature of the charge and of the possible penalties, and whether he knew he would be required to comply with trial rules of procedure. Id. This analysis aids the court in determining whether the defendant had sufficient background to waive counsel or was apprised of his rights by another source. Id.

In regard to waiving counsel in a probation revocation hearing, the court first looks to the exchange between the court and the probation agent during the hearing. Id. at 416, 680 S.E.2d at 14. If the court does not explicitly address the specific dangers and disadvantages of proceeding *pro se* as required by Ferretta¹, the Court notes that the next inquiry is whether the defendant signed a probation notice by his probation officer, acknowledging in part that he may have an attorney represent him and if he could not afford one, one would be appointed on his behalf. Bryant, 383 S.C. at 410, 416-17, 680 S.E.2d 11, 14. The probation notice typically states that it is the defendant's responsibility to ensure that his or her witnesses and attorney appear at the hearing. Id. In Bryant, the court held that though the court did not explicitly warn the defendant of the dangers and disadvantages of self-representation, because the defendant signed a probation notice prior to the hearing informing her of her rights and considering her extensive experience in the criminal justice system, specifically in probation court, as well as previous representation

¹ Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

for the underlying charges, she had a sufficient background to waive counsel and was apprised of her rights by some other source. *Id.* at 417, 680 S.E.2d at 14.

In the case at bar, Applicant signed a notice of probation, informing him of his rights, on April 13, 2016. This notice expressly stated that he may have an attorney represent him, and that if he could not afford one, one would be appointed for him. Therefore, the responsibility fell on Applicant to make arrangements to hire an attorney to appear at the probation revocation hearing, if desired, as acknowledged in the signed probation notice. Because Applicant was apprised of his rights by his probation agent through the signed probation notice, Applicant possessed sufficient background to waive his right to counsel and was apprised of his rights through his probation agent. Therefore, this court finds that the allegation of denial of probation revocation counsel is without merit and is summarily dismissed as there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law.

[Conclusion and Signature on Following Page]

2016 JAN 10 AM 9:20
M. HOPE BLACKLEY

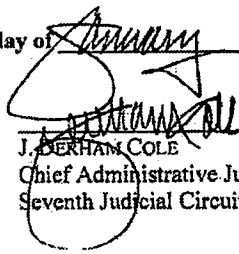
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Valerie Giovanoli, Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 9 day of January, 2017.

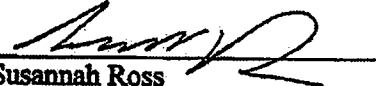

J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit
2018 JAN 10 AM 9:20
H. HOPPE/BLACKLEY

_____, South Carolina

expressly address the dangers and disadvantages of appearing pro se as required by Faretta. See *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, (1975) and *State v. Bryant*, 383 S.C. 410, 680 S.E.2d 11, (Ct. App. 2009). Here, the citation does not suffice as a waiver of rights which brings into question whether the applicant knowingly waived his right to counsel.

The undersigned on behalf of the Applicant requests that the PCR action proceed to a full hearing.

Respectfully submitted,


Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 10 day of January, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JAMIE A. MAKEUPSON,
APPELLANT,

VS.

THE STATE OF SOUTH CAROLINA,
RESPONDANT.

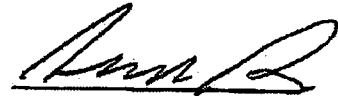
IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-42-1808

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Reply to Conditional Order of Dismissal in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211

Attn: Valerie Giovanoli



Attorney for Defendant

Greenville, South Carolina
This 10 day of January, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2017-CP-42-1808

JAMIE A. MAKUPSON)
)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)

FEBRUARY 22, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

VALERIE GIOVANOLI, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SUSANNAH C. ROSS, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
JAMIE A. MAKUPSON				
By MS. ROSS	12			
By Ms. Giovanoli		16		
HANNAH PRICE				
By MS. ROSS	18			
By Ms. Giovanoli		31		

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Certificate of convictions		8
S-1	Notice of Probation Violation		8
A-1	Violation report		15

1 MS. GIOVANOLI - May it please the Court.

2 THE COURT - Yes, ma'am.

3 MS. GIOVANOLI - This is Jamie Makupson versus The
4 State of South Carolina, docket number 2017-CP-42-1808.
5 We're before the Court on an application for Post-
6 Conviction relief that was filed May 22nd, 2017. Applicant
7 was originally convicted on June 28th, 2013. He pled
8 guilty as indicted to assault and battery first degree and
9 assault and battery second degree and threatening the life
10 of a person or family or a public official, official
11 teacher or principal, excuse me. Judge Hayes sentenced him
12 to imprisonment for concurrent terms of ten years for
13 assault and battery first degree provided that upon the
14 service of five years and the balance was suspended with
15 probation for five years, three years for assault and
16 battery second degree and five years for the threatening of
17 the life of a person or family of public official, teacher
18 or principal. He didn't appeal those convictions, but on
19 April the 4th, 2016 a probation citation was issued for
20 applicant while he was on probation. The affidavit stated
21 that he was being arrested for the following reasons:
22 failure to report as instructed and having missed an office
23 visit, failure to refrain from changing his residence
24 without prior consent of the agent, failure to refrain from
25 the use of controlled substances having tested positive for

1 THC, cocaine and opiates on March 8th, 2016 and March 15th,
2 2016, failure to work diligently at a lawful occupation
3 having never provided the agent with proof of employment or
4 proof of any effort to obtain employment, failure to pay
5 supervision fee being six hundred dollars in arrears and
6 having never made a payment on his account since beginning
7 probation, failure to pay the court fine being one hundred
8 and eighty dollars in arrears and having never made a
9 payment on this account since beginning probation, failure
10 to pay the one time twenty dollar drug test fee, failure to
11 follow the advice and instructions of the supervising agent
12 and failure to comply with special conditions of anger
13 management counseling. So on June 17th, 2016 the applicant
14 appeared before The Honorable R. Keith Kelly for the
15 probation revocation hearing. Judge Kelly revoked
16 applicant's probation and required him to serve his
17 remaining five-year sentence. He didn't appeal that
18 conviction -- I mean that probation revocation, however, he
19 did file this Post-Conviction relief application alleging
20 two separate issues, one, that the court of general
21 sessions lacks subject matter jurisdiction to revoke his
22 probation and the other issue being whether or not he
23 waived his right to counsel at his probation revocation
24 hearing.

1 The State had filed a motion to dismiss this case
2 and basically we move to dismiss number one, any
3 allegations to the extent that he's making allegations with
4 regard to his guilty plea, because the statute of
5 limitations has run. It had expired three years by the
6 time he filed this Post-Conviction relief action, but it's
7 my understanding that he's only filing against the
8 probation revocation and it is timely in that regard, but
9 we also move to dismiss the allegation that the court of
10 general sessions lacks subject matter jurisdiction to
11 revoke his probation. There's no genuine issue of material
12 fact and we're entitled to a judgment as a matter of law,
13 because the court of general sessions did, in fact, have
14 jurisdiction to revoke his probation. And then with regard
15 to his allegation that he did not voluntarily and knowingly
16 waive his right to an attorney in the probation hearing, I
17 cited some case law in our motion and I have a copy of the
18 Court would like one. May I approach?

19 THE COURT - Yes.

20 MS. GIOVANOLI - And this is State vs. Bryant and
21 in this case of probation, there was a probation revocation
22 hearing and the Court merely advised Mrs. Bryant that he
23 (sic) had a right to an attorney, but he (sic) didn't
24 engage in the complete Faretta warnings which require a
25 Court to inquire as to -- or at least advise the

1 probationer that they have a right to an attorney and the
2 dangers of proceeding pro se before they can validly find a
3 voluntary waiver of right to counsel. In that case the
4 Court did not advise Mrs. Bryant of the dangers of
5 proceeding pro se, but the Court specifically said on page
6 three, so they kind of saying how Faretta warnings on the
7 record are preferential, however, on page three, it starts
8 on page 415 of the actual Opinion, however, when the Trial
9 Court fails to expressly make this inquiry, the Court will
10 examine the record to determine whether the accused had
11 sufficient background or was apprised of her rights by some
12 other source. And then it continues on to explain some of
13 the factors that the Court looks at, and that's on page
14 four, they're enumerated one through ten, but what's
15 analogous in this case, the case in Bryant, was that it's
16 similar that they -- both -- both this applicant and Mrs.
17 Bryant weren't advised of the dangers of proceeding pro se,
18 and that Court found on page four, however, prior to her
19 hearing, Bryant signed a probation notice with her
20 probation officer, and it goes on to cite that probation
21 notice verbatim and found that also because it was Bryant's
22 third appearance before the probation Court for the
23 violation that there was a knowing and voluntary waiver of
24 her right to counsel. In this case -- and I'm going to
25 submit these I believe with stipulation -- I have already

1 marked them as Court's Exhibit 1, but these are certified
2 convictions to show some of the applicant's prior criminal
3 history. I've also pre-marked as State's Exhibit 1 the
4 notice of probation violation, which was signed by Mr.
5 Makupson, as well as the notice of his rights. They
6 verbatim have the same verbiage as the form that was
7 provided in Mrs. Bryant's case of the -- the Supreme Court
8 case that I have handed up, so I would like to offer these
9 before Your Honor with stipulation I believe ---

10 MS. ROSS - Yes, we'll stipulate. We have no
11 objection.

12 THE COURT - Very good.

13 MS. GIOVANOLI - May I approach?

14 THE COURT - Yes.

15 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT.)

16 (WHEREUPON, DOCUMENTS MARKED AS COURT'S EXHIBIT 1
17 AND STATE'S EXHIBIT 1.)

18 MS. GIOVANOLI - So at this point the State would
19 argue that based on the record before the Court -- and we
20 do concede that there was no discussion during the
21 probation revocation in the transcript regarding Mr. --
22 applicant's right to an attorney or the dangers of
23 proceeding pro se, however, we will argue that in the
24 record we have certified convictions to show he has an
25 extensive criminal history, the probation records are also

1 part of the record and they actually show that he has been
2 on probation five -- this is his sixth time on probation
3 and he has violated each and every time. The certified
4 convictions also show that he was represented by counsel at
5 each one of those proceedings, and then finally, I think
6 the most compelling thing is the notice of the probation
7 violation, as well as the notice of rights that were signed
8 by -- served and signed by Mr. Makupson -- both informed
9 him of his right to an attorney and the dangers of
10 proceeding pro se. So I think at this point just based on
11 the record, we're entitled to judgment as a matter of law,
12 and we would move to dismiss this case at this point.

13 And one last procedural thing -- I'm sorry ---
14 there was a conditional order of dismissal signed by Judge
15 Cole, and in response to that Ms. Ross had filed her
16 response and that's why I set this for an actual oral
17 motion.

18 THE COURT - Yes, ma'am, you're recognized.

19 MS. ROSS - Thank you, Your Honor. May it please
20 the Court.

21 I'm not sure -- do you have a copy of my reply to
22 the conditional order of dismissal?

23 THE COURT - I do. I have it right before me now.

1 MS. ROSS - All right, that addresses most of our
2 argument, and I also have a case State vs. Brannon, if I
3 may approach ---

4 THE COURT - Yes.

5 MS. ROSS - --- I believe address the issue as
6 well.

7 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

8 MS. ROSS - Essentially -- and there's Moore v.
9 State that there must be a knowing and voluntary waiver of
10 the fundamental right in the record. I did not make a copy
11 of that. I'm not sure why. (Pause) I must've -- I just
12 didn't make a extra copy, but here's my copy. I'm sorry
13 it's written on.

14 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

15 THE COURT - Yes, ma'am.

16 MS. ROSS - So essentially Moore v. State and then
17 the State v. Brannon, which I've passed up, both stand for
18 the law that there must be a knowing and voluntarily made
19 waiver of fundamental right. I distinguish State v. Bryant
20 on page three. They print out the colloquy in my copy, "Do
21 you understand you have a right to have a lawyer present in
22 connection with these proceedings?" "Yes, sir." So while
23 there are no Faretta warnings specifically in State v.
24 Bryant, there is that recognition of the right to counsel
25 and that simply doesn't exist in Mr. Makupson's transcript.

1 And that's our basis to believe there's an issue of
2 material fact here.

3 THE COURT - All right, well, you -- you may
4 proceed if you would like to call a witness or put anything
5 else on the record. I'll be happy to hear from you.

6 MS. ROSS - Okay, thank you, Your Honor. May it
7 please the Court. We'd call Jamie Makupson.

8 THE COURT - Mr. Makupson, if you would please
9 come forward. You can place your left hand on the Bible
10 and raise your right hand as the clerk administers the
11 oath. Place your left hand on the Bible and raise your
12 right hand, please, sir.

13 JAMIE MAKUPSON, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 THE COURT - All right, please have a seat there,
16 Mr. Makupson. Pull up real close to that microphone and
17 speak loudly, clearly and slowly in order that we can hear
18 everything that you have to say, and let's start with your
19 full name and let's spell that last one for us.

20 MR. MAKUPSON - All right, my full name is Jamie
21 Anthony Makupson. My last name is spelled M-a-k-u-p-s-o-
22 n.

23 THE COURT - Yes, ma'am, you're recognized.

24 DIRECT EXAMINATION

25 BY MS. ROSS -

1 Q Okay, Mr. Makupson, do you understand why you're here
2 for Post-Conviction relief?

3 A Yes, ma'am.

4 Q And do you understand you'll be put back in the
5 position you were in before this probation violation?

6 A Yes, ma'am.

7 Q Now, when your agent took you to this probation
8 violation, what had happened -- what did you expect?

9 A I -- I never knowed I was going to a probation
10 violation. What was told to me -- I went to report. I
11 never -- I never knowed that -- she told me -- I asked for
12 a probation officer change. She said, meet me in the
13 courtroom in 30 minutes and I will change your probation
14 officer. When I got over here, we got into a discussion
15 when I was sitting at the, um, the benches over there, we
16 got into a discussion about this, and she told the judge
17 that I was being belligerent and that she was violating me
18 and I was asking under what terms am I being violated, so
19 she said that I missed a report, which it's reported that I
20 never -- I never missed a report. She said I changed my
21 address. My people still stay in the same address right
22 now to this date. And she said that um, -- she said I
23 changed my address and missed a report, and she stated
24 something else. Let me see, changed address, missed a
25 report, something else, but when I got in here, I'm like,

1 you know, I have no citation, I have no warrant, I never,
2 you know, got a warrant or nothing like that to go to jail,
3 so I was like, I know that I wasn't supposed to be in jail.
4 I came for a probation officer change, not a violation.
5 What was my violation?

6 THE COURT - How about the drug test?

7 MR. MAKUPSON - The drug test, I failed the drug
8 test, but she stated I failed two drug tests on March -- I
9 never had two reports in the same month. I failed the
10 first drug test March, 2016, the first time I ever --
11 what's her name -- she saying that I had another one. I
12 never had another one. And I brought that up in my
13 transcript, too. I told the judge, I said, I never -- I
14 never failed another. I only failed one drug test, and she
15 say I missed a report. I never missed a report, but she
16 had me reporting -- and the proof of that is she had me
17 reporting every two months. She said I missed a report in
18 December. I started my reports in March. You do the math.

19 Q Okay. Now, when you went to Court, would you have
20 liked to have a lawyer with you?

21 A Yes, I -- yes, I would, and I asked about that, and
22 she said that I had -- I had -- she told the judge -- the
23 judge asked me why I didn't have a lawyer and when I went
24 to answer, she jumped in over me and told the judge, no, I
25 told him to get a lawyer, he said he wasn't going to get --

1 I'm like, well, he asked me a question, why did she jump in
2 and answer the question that he asked me? Because she had
3 a chance to talk but he -- she jumped in and answered my
4 question for me instead of letting me answer the question.
5 I never had a chance to get a lawyer, because I ain't never
6 -- from the get-go I didn't know I was going to Court for a
7 violation of probation. The thing was, the argument we had
8 in her office stated that I was coming over here to get a
9 probation officer change. I didn't know. I been on
10 probation five, six times, true, been on probation five,
11 six times, but I -- I figured this one time here, I said I
12 was getting over it, I'm going to complete probation. I
13 did sixteen months. Every other probation you'll see, one
14 month violation. I did sixteen straight months no
15 problems. Only problem was me and her couldn't see eye-to-
16 eye. That was the only problem. I didn't catch no charges
17 on the street, nothing.

18 Q Mr. Makupson, how far did you go in school?

19 A To the -- I went to the sixth grade, and I got a um,
20 GED and I went to college when I got my GED.

21 Q Now, I'm going to show you this. It's a violation
22 report. It's part of the record. Have you ever seen that
23 before or do you remember seeing that before?

24 A I ain't never seen this before.

25 Q What does it say is the recommendation?

1 A (No response)

2 Q What's the agent's recommendation?

3 A Partial revocation of two years, toll time from date
4 of warrant, continue probation, time satisfies supervision
5 arrangements.

6 Q Okay.

7 MS. ROSS - That's part of the record. Would you
8 like me to enter it separately as an exhibit?

9 THE COURT - Yes.

10 MS. ROSS - We'd offer Applicant's 1 at this time.

11 MS. GIOVANOLI - Could you just clarify what page?

12 MS. ROSS - It is -- it is the ---

13 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
14 OUT OF THE HEARING OF EVERYONE WHICH WAS NOT REPORTED.)

15 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
16 APPLICANT'S EXHIBIT NUMBER 1.)

17 Q Now, do you think a lawyer might've helped you get
18 closer to that recommendation of two years versus a full
19 revocation of five years?

20 A I'm pretty sure he would. I never knowed that I had a
21 recommendation of two years and they gave me a whole five
22 for nothing.

23 MS. ROSS - I have no further questions.

24 THE COURT - Cross examination, yes, ma'am.

25 MS. GIOVANOLI - Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MS. GIOVANOLI -

3 Q Hey, Mr. Makupson, how you doing?

4 A I'm fine. How you?

5 Q I'm okay. That document that you -- we just admitted
6 into evidence actually states this was your response to the
7 probation officer when she asked you about where you were
8 living, "I'm a grown man, I can stay at other locations. I
9 can stay with my baby mama for a month if I want; It
10 doesn't mean I moved." Is that what you told the probation
11 agent?

12 A I -- I don't remember telling her that I can stay for
13 a month, but I told her that I could go spend the night
14 with my baby mother if I wanted to and I still lived in the
15 same place, yes, I told her that. I remember that, because
16 she was questioning me on why I wasn't at home when she
17 came for a home visit, and I told her I was over at my baby
18 mother's house, and she was like, well, you don't -- you
19 don't need to be staying over there and this and that, and
20 I say, well, you know, I have a relationship with my baby
21 mother, so it's only right that I go over and spend the
22 night sometime, but I still stay at home.

23 Q You never sought lawful employment during this time on
24 probation, did you?

1 A I sought it many times, brought applications. She
2 never called the people to help me get employment. I
3 thought that what a probation officer supposed to do, help
4 you get employment.

5 Q So it's your testimony today that you provided her
6 with copies of applications ---

7 A With copies of applications. I went to temp services
8 and all, and I brought applications to Ms. Price. She
9 never helped me get a job for sixteen whole months.

10 Q But you never did the anger management classes that
11 you were ---

12 A No, I never -- I never had a anger management class.
13 The only one I had was the one that the judge sentenced me
14 to in the penitentiary. I did it and brought her the
15 certificate. She said it didn't count.

16 Q You're talking about when you were the department of
17 corrections?

18 A And that what it was -- it was on my sentencing sheet,
19 anger management in department of corrections and mental
20 health. I did mental health and anger management in the
21 department of corrections, and I brought her the
22 certificate, and she said it didn't count.

23 MS. GIOVANOLI - Okay, I have no further
24 questions. Thank you very much.

25 MS. ROSS - Nothing further, Your Honor.

HANNA PRICE - DIRECT BY MS. GIOVANOLI

18

1 THE COURT - You may step down. Thank you.

2 MS. ROSS - That's the applicant's case, Your
3 Honor.

4 THE COURT - All right.

5 MS. GIOVANOLI - And, Your Honor, the State has a
6 witness if the Court would ---

7 THE COURT - Yes.

8 MS. GIOVANOLI - Agent Hannah Price.

9 THE COURT - Yes, ma'am, Ms. Price, if you could
10 please come forward and place your left hand on the Bible
11 and raise your right hand as the clerk administers the
12 oath, or as I administer the oath.

13 HANNA PRICE, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 THE COURT - Have a seat in the witness chair.
16 I'm going to ask you to pull up real close to that
17 microphone and speak loudly, clearly and slowly.

18 Ms. Giovanoli, you're recognized.

19 MS. GIOVANOLI - Thank you, Your Honor.

20 Thank you for being here, Agent Price.

21 DIRECT EXAMINATION

22 BY MS. GIOVANOLI -

23 Q What is your profession?

24 A I'm a probation agent with the South Carolina
25 Department of Probation and Parole and Pardon Services.

1 Q And how long have you been in that position?

2 A Since August of 2013.

3 Q And so you came to be Mr. Makupson's probation
4 officer. Is that correct?

5 A Yes, ma'am.

6 Q Can you tell me a little bit about how you came to be
7 involved in this case?

8 A Yes. We are assigned by geographical address, so as
9 upon an offender's first release to probation or from SCDC,
10 whatever address they give, we are assigned that geographic
11 location based on whatever agent represents that area.

12 Q And is the probation -- or Mr. Makupson, was he
13 provided with the conditions and terms of his probation?

14 A Yes, ma'am, they're provided with that upon their
15 sentencing, so his would've been on June 28th of 2013.

16 Q Okay.

17 MS. GIOVANOLI - And I will note for the record
18 that is part of the record of this case in the probation
19 records.

20 Q Okay, so there was a violation in this case or you
21 violated Mr. Makupson. Is that correct?

22 A Yes, ma'am.

23 Q Can you please elaborate on those violations?

24 A Um ---

1 MS. ROSS - Judge, I would object to relevance.
2 We have the record, the Court record, here. The issue is
3 whether Mr. Makupson was denied counsel.

4 THE COURT - I'm going to allow some leeway. I
5 think it's probably important for the record for them to
6 understand the nature of the violation, whether or not it's
7 something that a lawyer could've assisted with. I think we
8 probably need to put it all on the record in that regard.

9 Q Okay, so we'll just start with the first one, failure
10 to report and missed an office visit. Why did you violate
11 him for that reason?

12 A Um, yes, ma'am, each and every office visit I would
13 instruct and give a piece of paper dictating when the next
14 report date would be. He was instructed, according to my
15 notes, on October 6th of 2015 that he was to report back on
16 December 1st of 2015 and failed to do so.

17 Q Was that only time he failed -- he missed an office
18 visit?

19 A That's the only time that he was charged with missing
20 an office visit. He did miss another one, but I did not
21 charge him with that.

22 Q Okay, so do you violate an offender every time that
23 they miss an office visit?

24 A No, ma'am. We try to give a little bit of
25 understanding, transportation, things of that nature as

1 well as -- one office visit isn't necessary to get a person
2 to a Court hearing or an administrative hearing, so I try
3 to kind of work with them and if the violations begin to
4 build up is when we start to look into further action.

5 Q And is that what happened in this case?

6 A Yes, ma'am.

7 Q Okay, and the second reason would be failure to
8 refrain from changing residence without prior consent of
9 the agent. Can you tell us why you violated him for that
10 reason?

11 A I conducted his initial home visit on April 30 of 2015
12 at [REDACTED] Old Farm Road. I spoke with his grandmother and his
13 aunt who stated that while his mail was at the address and
14 being forwarded to the address, the offender did not reside
15 there, nor was he welcome to reside there. I thanked them
16 for their information and they stated that the offender
17 lived with his sister somewhere in the city. I just asked
18 them to have him contact me as soon as possible.

19 Q Okay, and then did you have any discussions with the
20 Mr. Makupson regarding residence?

21 A Yes. Upon his next report he stated repeatedly that
22 he -- he did, in fact, live there. I explained to him that
23 just because your mail goes to a certain area is not
24 necessarily where you lay your head. He then changed his
25 address to [REDACTED] Alma Bird (phonetic) Lane.

1 Q So he told you at first he lived with his grandmother
2 and mother was it, or aunt?

3 A Aunt.

4 Q And then he later in that same conversation said he
5 lived somewhere else?

6 A Yes, ma'am.

7 Q And did he ever seek permission to change his address
8 with you prior to moving?

9 A No, ma'am.

10 Q And so when he gave you the second address, what else
11 did he say?

12 A Um, there were further discussions each time.
13 According to their conditions, they are to bring proof of
14 residence of proof of employment at each report date. He
15 was instructed to do that in that he had already moved once
16 without showing me proof of residence I needed to be able
17 to see. I asked him on an office visit -- excuse me for
18 just one second ---

19 (WHEREUPON, APPLICANT IS MUMBLING SOMETHING WHICH
20 WAS INAUDIBLE)

21 THE COURT - All right, now, Mr. Makupson, ---

22 MR. MAKUPSON - I apologize.

23 THE COURT - --- you know, it's my job to listen
24 to all of the evidence that's being presented here today
25 and to make a ruling, but I also have an obligation to

1 maintain the order in the Court, and now is not the time
2 for you to talk ---

3 MR. MAKUPSON - Yes, sir.

4 THE COURT - --- and I'm going to order that you
5 not have anymore outbursts, ---

6 MR. MAKUPSON - Yes, sir.

7 THE COURT - --- and if you do, then I'm going to
8 order that they remove you from the courtroom, and at the
9 conclusion of the day I'm going to bring you back in for a
10 contempt hearing and you can get an additional six months
11 for that, or depending upon the severity of your outbursts,
12 it might be that you -- that there will be proceedings --
13 you'll be allowed -- afforded a lawyer and we will go
14 forward, but just -- just by another outbursts, I can give
15 you six months without a lawyer summarily. Do you
16 understand that?

17 MR. MAKUPSON - I understand.

18 THE COURT - You going to cooperate with me?

19 MR. MAKUPSON - Yes, sir, I'm going to cooperate.

20 THE COURT - Very good.

21 Yes, ma'am.

22 MS. GIOVANOLI - Thank you, Your Honor.

23 Q Do you remember where you were?

24 A Regarding his address.

1 Q Okay. So then after he told you he was living
2 somewhere else, then what did he say?

3 A He stated on September 29th, 2015 when the agent --
4 when I advised him that he -- he stated that I had his
5 address, when he was asked to verify his address, he stated
6 I had it and he didn't know it. I advised him he needed to
7 bring a piece of mail validating his address. The offender
8 became angry and was asked to leave and bring me back proof
9 of address in two weeks.

10 Q So his demeanor during that meeting, how was that?

11 A Belligerent and aggressive to the point where he had
12 to be escorted out.

13 MS. ROSS - And, Judge, again, I would object to
14 the relevance in this -- for this proceeding.

15 THE COURT - Well, I think it is relevant because
16 one of the things that needs to be put on the record is
17 whether or not, you know, there's a valid offense to his
18 probation violation. I think that's important, and I'm
19 going to allow them to do that, but your objection is noted
20 on the record.

21 MS. GIOVANOLI - Thank you, Your Honor.

22 Q Okay, so we'll go to the third violation. That was
23 the failed drug test. You heard Mr. Makupson claim that he
24 only took one drug test, but your record -- the records

1 indicate that there were two. Is it your testimony today
2 that there were two drug tests?

3 A Yes, ma'am. He was drug tested on March 8th when he
4 was given what was called a financial summons where
5 everybody would come to Court to discuss their financial
6 issues with the probation office. It was not a Court
7 hearing in front of a Judge, per se, just going in the
8 actual courtroom to be able to house and address as many
9 offenders as we had that day. He was given a -- I
10 apologize -- a drug test that day. He was positive for
11 cocaine, marijuana and opiates. He stated that his drug --
12 or his system should be clean by the next week, so I
13 advised him that he had to come in the very next week,
14 let's drug test for everything again and then go from
15 there. That very next week he was again positive for
16 opiates, THC and cocaine.

17 Q And was that drug test taken on 3/15/16?

18 A Yes, ma'am.

19 Q All right, so then the next violation would've been a
20 failure to work diligently at a lawful occupation. Did he
21 ever provide you any proof that he was seeking lawful --
22 lawful occupation?

23 A Not that he -- not that he was -- that he had applied.
24 He stated to me on January 12th that he was, quote, trying,
25 and has turned down jobs at Leer & Excel due to

1 transportation issues and is looking at a job -- I believe
2 he called it Nemato on the bus line but had not brought me
3 any proof of those efforts to obtain.

4 Q Okay, and is that a requirement or a condition of his
5 probation?

6 A Yes, especially when somebody is having trouble
7 getting any employment, I need to see that you're actually
8 showing applications. I'll give job search forms, things
9 of that nature, bring them back to me with the people that
10 I could contact if you did contact them yourself.

11 Q Did you, in fact, assist him in trying to get lawful
12 occupation?

13 A We have a lists of various temp agencies that work
14 with offenders with records. I did give him that. As far
15 as any other thing, I do not recall.

16 Q Okay, and then we'll go to the failure to pay the
17 supervision fee. That was a violation. Why did you
18 violate him on that?

19 A Just simply due to his arrearage at the time of the
20 issuance.

21 Q And do you typically as your practice violate people
22 just for failing to pay a supervision fee?

23 A No, ma'am.

24 Q Is that something that you add on when they've
25 violated other conditions?

1 A We're informed that we have to address all violations
2 at the time of the issuance and process.

3 Q And that would also be relevant to the failure to pay
4 the Court fine?

5 A Yes, ma'am.

6 Q And the failure to pay the one time twenty dollar drug
7 test fee?

8 A Yes, ma'am.

9 Q Okay. And then we've got two other ones, failure to
10 follow the advice and instructions of the supervising
11 agent. I believe you've testified to a little bit of that.
12 Did you leave anything out? Is there anything additional?

13 A Just generally -- general, be here in the office and
14 the community, so on and so forth, as well as anything that
15 I instruct you to do is subject to that, failure to follow
16 advise and instructions.

17 Q And -- okay, and then the last one is failure to
18 comply with special condition of anger management
19 counseling. He testified that he actually did do the anger
20 management counseling, so why -- why did you violate him
21 for that reason?

22 A Per our supervisors, when somebody has done those
23 things in SCDC, we still require that they do them on the
24 outside unless it is an extensive program that is fitting
25 to what we do with our providers, Don Foster or The

1 Forrester Center, whatever the case me. In Mr. Makupson's
 2 case, I was instructed by my supervisor that he needed to
 3 attend anger management counseling per the sentencing
 4 sheet, therefore, I did refer him.

5 Q And did you inform him that that was going to be a
 6 requirement, a condition of the probation?

7 A Yes, ma'am.

8 Q And what was his response to that?

9 A Belligerence each and every time that we spoke about
 10 it.

11 Q Was he belligerent on more than one office visit?

12 A Yes, ma'am, there -- his very first office visit he
 13 had to be escorted out of the building, an office visit on
 14 -- I apologize -- he -- he was instructed to speak to my
 15 supervisor because he would not calm down long enough to
 16 speak with me about anything that was going on with his
 17 case, and then when he was served a citation, again,
 18 belligerence to the point of being escorted out of the
 19 office.

20 Q Okay. And what's -- it's already been admitted into
 21 evidence, but you have with you State's Exhibit 1 for
 22 reference, the notice of the probation violation as well as
 23 the notice of rights.

24 MS. GIOVANOLI - May I approach with the State's
 25 Exhibit?

1 THE COURT - Yes.

2 (WHEREUPON, DOCUMENT HANDED UP)

3 Q Do you recognize this document?

4 A Yes, ma'am.

5 Q And did you serve this on the -- Mr. Makupson?

6 A Yes, ma'am.

7 Q And when did you serve it on him?

8 A April 13, 2016.

9 Q Okay, and did you witness him sign that?

10 A Yes, ma'am.

11 Q As well as the other notice. Were these served

12 together?

13 A Yes, ma'am.

14 Q All right. Thank you. Did you have any other
15 discussions with Mr. Makupson about his right to an
16 attorney or anything regarding a lawyer for the probation
17 revocation hearing?

18 A Yes, ma'am. He showed up to my office on June 14th,
19 2016, three days prior, on a Tuesday, which would standard
20 be my report date. He stated that he thought I said that
21 we were going to Court. I advised him that Court was not
22 until Friday. I asked the offender on that day if he had
23 gotten an attorney and he just shrugged his shoulders and
24 the agent said why haven't you gotten one. He shrugged his
25 shoulders again. I asked if he didn't feel like it; the

1 offender said yes, and I asked if he was going to represent
 2 himself, and he stated yes. He was advised to then return
 3 back on Friday for a hearing.

4 Q Okay, and based on your review of this case, did Mr.
 5 Makupson have a prior history with probation?

6 A Yes, ma'am, he had been placed on probation, as it was
 7 stated before, five previous times and revoked in full all
 8 five prior times. This was his sixth time.

9 Q There was some testimony earlier about a
 10 recommendation that you had made for -- okay, it's on -- in
 11 the documents, the probation revocation document. I'm sure
 12 you know what I'm talking about better than I do. It's
 13 under agent's recommendation. This has been admitted as
 14 Applicant's Exhibit 1. Partial revocation of two years,
 15 toll time from date of warrant, continue probation, time
 16 satisfies supervision fee arrearages. Can you explain
 17 that?

18 A Yes, ma'am. As I have it, when the citations are
 19 drafted, we typically will start this process where we make
 20 a recommendation. They are not finalized until previous to
 21 the hearing, typically a couple of days prior to the
 22 hearing. I try to go a little bit less forceful in the
 23 event that we can work with the offender based on their
 24 behavior, so on and so forth. After Mr. Makupson's
 25 behavior when being served with the citation, I changed my

1 justification. I had forgotten to change my recommendation
2 at that time.

3 Q Okay. So this wasn't, in fact, your recommendation to
4 the Court the day of the probation recommendation.

5 A Correct.

6 MS. GIOVANOLI - I have no further questions.

7 Thank you very much.

8 THE COURT - Any cross examination?

9 MS. ROSS - I just ---

10 CROSS EXAMINATION

11 BY MS. ROSS

12 Q You were -- some of your testimony before was he
13 said/she said. Did you record all this? Is this a
14 transcript of recordings?

15 A No, ma'am, we don't make it a -- a habit to record
16 anything in our probation office in an effort to kind of
17 procure trust between the offender and the agent. This is
18 all notations that I had made throughout his tenure on my
19 case load.

20 Q So those are specific notations that you just
21 testified to about he then shrugged his shoulders and he
22 went like this and those are all in your records?

23 A Yes, ma'am.

24 Q All right.

25 MS. ROSS - I've got no further questions.

1 THE COURT - All right, you may -- you may -- any
2 redirect?

3 MS. ROSS - No further questions.

4 THE COURT - You may step down. Any further
5 testimony or anything to offer from the State?

6 MS. GIOVANOLI - No, Your Honor.

7 THE COURT - These are very important matters and
8 -- and I want an opportunity to review this, think on it,
9 and I'm going to ask that both lawyers send in proposed
10 orders and ask that you do that within -- Ms. Giovanoli, I
11 know you have a lot of orders out. How long do you need to
12 do your proposed orders?

13 MS. GIOVANOLI - I can guarantee I'll get them to
14 you in two weeks.

15 THE COURT - Okay. Defense counsel -- yes, ma'am.
16 How long do you think -- could you do it within fourteen
17 days?

18 MS. ROSS - I could, Your Honor.

19 THE COURT - Okay. And you've done a good job
20 setting forth your position on the reply to conditional
21 order of dismissal, so hopefully y'all will be able to do
22 that. Send that to my office in Florence with a self-
23 addressed, stamped envelope enclosed so I can return it to
24 the clerk's office -- return it to you and the order that's

1 signed can then be filed with the clerk of court and served
2 on everyone.

3 MS. ROSS - Judge, I'm out of Greenville. Would
4 you mind if it did make it addressed to the clerk of court
5 here, the envelope that I ---

6 THE COURT - Well, it might be a problem, because
7 I won't be able to sign it.

8 MS. ROSS - I see. Okay.

9 THE COURT - That's the reason you send it to me
10 and I'm going to review both of them. I'm going to sign
11 one or the other or draft my own.

12 MS. ROSS - Right.

13 THE COURT - And if you send it to me and I send
14 it back to you and it needs to be a return address to you,
15 and I'll send it back to you and if I sign your order, then
16 you have it filed.

17 MS. ROSS - All right, thank you.

18 THE COURT - That's the way it operates.

19 All right. Thank you, and Mr. Makupson, good
20 luck to you.

21 MR. MAKUPSON - Yes, sir.

22 (END OF TRANSCRIPT)

23

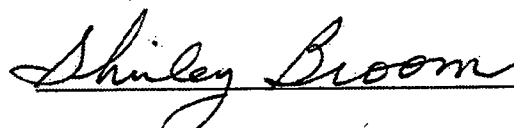
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 33 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Jamie A. Makupson vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on February 22, 2018, and provided by me this the 28th day of September 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

South Carolina Department of Probation, Parole and Pardon Services
Violation Report

Offender's Name: **JAMIE ANTHONY MAKUPSON**

State of South Carolina, County of: **SPARTANBURG**

SID#: **01061614**

Warrant#: **C-42-16-0177**

Date of Birth: **1979**

SCDC#: **281398**

Indictment Numbers:

13-GS-42-02321

Offense and Offense Code:

3412 - Assault & Battery 1st Degree

Supervision Program: **Probation**

Begin Date: **3/16/2015**

End Date: **3/15/2020**

Supervision Level: **High Supervision**

Potential End Date: **9/2/2018**

Adjusted End Date: **3/15/2020**

Sentencing Judge: **132 - Hayes, J.**

Sentencing County: **SPARTANBURG**

Sentencing Date: **6/28/2013**

Location (Bold Response): **Community**

Sentence:

Assault and Battery 1st degree: 10 years suspended to 5 years and 5 years probation.

Special Conditions:

Fine-\$648.90

No contact with Victim

Anger Management Classes

Mental Health Compliance

Current Address and Summary of Residence:

[REDACTED] SPARTANBURG, SC 29301, SPARTANBURG, USA,

[REDACTED] MOORE, SC 29369, SPARTANBURG, USA, ; [REDACTED], SPARTANBURG, SC 29306, SPARTANBURG, USA,

The offender reports living with his sister at [REDACTED]. However the offender has argued with the Agent at EVERY OFFICE VISIT, stating that he lives in the same place and doesn't need to provide the Agent with proof. Agent advised that this is part of his conditions. Upon the Agent's initial home visit, the offender's grandmother and aunt stated that he did not live at [REDACTED], nor was he welcome there, he just sent his mail there. When asked, the offender stated repeatedly that he lived there, that is where is mail is. Agent had to explain to the offender what a residence is. At the offender's last office visit when the citation was issued, Agent had conducted a home visit on 4/11/16, where the Agent was informed that the offender had not been seen at his sister's home for a week. The offender became aggressive and belligerent when confronted with this information, stating that "I am a grown man, and I can stay at other locations. I can stay with my baby mama for a month if I want to, doesn't mean I moved." Agent advised offender that this is not the first time he has "misunderstood" what residence means, and that he can only have one residence. The offender became so aggressive, the Agent gave him a copy of the citation and hearing notice, and had him escorted out of the office.

Reporting:

The offender generally reports as instructed.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Disabled	4/7/2015 -		
	6/10/2008 - 4/7/2015		

The offender states he is disabled. However the offender has provided no proof of his disability. The offender states that he is looking for a job at every office visit, but has never provided proof, and constantly uses his background as an excuse.

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
Drug Test Fee	\$20.00	\$20.00/M	\$0.00		\$20.00	\$20.00



Carolina Department of Probation, Parole and Pardon Services
 Probation Report

Offender's Name: JAMIE ANTHONY MAKUPSON

Regular Supervision	\$3,000.00	\$50.00/M	\$0.00	\$700.00	\$3,000.00
Fines					
Court Ordered Fines	\$648.90	\$15.00/M	\$0.00	\$210.00	\$648.90

Prior Violation Dates	Prior Violations	Prior Violation Disposition

Details of the Present Violation:

Violation of probation sections 1, 2, 3, 5, 7, 9, 10 and special conditions as ordered under cause number 13-GS-42-02321 by the Spartanburg County Court of General Sessions.

- Failure to report as instructed having missed an office visit on 12/1/15.
- Failure to refrain from changing residence without prior consent of the Agent. On 4/30/2015, the Agent was informed by the homeowner, that the offender did not reside at [redacted] Old Farm Rd. as he reported, but just uses it for mailing purposes. The Agent did not know the offender's true location or address at that time, and the offender is considered to have absconded supervision. The offender did not inform the Agent until pressed at his next office visit on 5/20/2015 where his actual residence was.
- Failure to refrain from the use of controlled substances having tested positive for THC, Cocaine and Opiates on 3/8/16 and 3/15/16.
- Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment.
- Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation on 03/16/15.
- Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation on 03/16/15.
- Failure to pay one time \$20 drug test fee.
- Failure to follow the advice and instructions of the supervising Agent.
- Failure to comply with special condition of Anger Management Counseling. The offender has been referred on 3/23/15, 7/28/15, 10/6/15 and 1/12/16 and has failed to show up for any classes to date.

Agent's Recommendation:

partial revocation of 2 years. Toll time from date of Warrant. Continue probation. Time satisfies supervision fee arrearages.

Agent's Justification:

This offender is in no way suitable for probation. This is his 6th time on probation, having been revoked all 5 other times. The offender is argumentative, disrespectful, and has it set in his mind that probation will be done on his terms. The very first office visit the offender had with the Agent, he was so aggressive, the Agent had him escorted out of the building, and told to report the next week. That has happened twice since he began probation. He has even had to speak with supervisors regarding his behavior in the office. The offender has a SIGNIFICANT anger and violence problem; as the offender's rap sheet reads 9 arrests for Criminal Domestic Violence, 2 for Kidnapping, 2 for Burglary 1st and 2 for Assault of Police Officer while resisting arrest. Furthermore, the offender has a significant drug problem, having tested positive for Cocaine and Opiates, as well as THC. Cocaine is a known drug to increase aggression, which seemingly is the last thing this offender needs. Couple his already inherent aggression with drugs, his lack of accountability and responsibility and his complete disregard for the safety of others, this Agent believes the offender poses an imminent and immediate danger to the community. This Agent feels as if his disregard for being referred to Anger Management Counseling, but placing priority and his monetary allocations toward drugs as opposed to helping himself, or paying for probation; shows his blatant disregard for the laws or rules that he believes do not pertain to him. This Agent feels that this offender should never have been placed on probation, and it is just a matter of time before he commits another assaultive offense; thus the Agent is requesting a full revocation.

Hannah Price.

Probation Agent

Date: 5/12/2016

Supervisor's Signature

Date: 5-16-2016

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

Indictment No. _____ - GS - _____

Probation/Community Supervision Program
Violation

State of South Carolina

Warrant/Citation # _____

v. Kenneth Mackay, Sr.

**NOTICE OF PROBATION/CSP
VIOLATION HEARING AND
ACKNOWLEDGMENT OF NOTICE**

You are hereby directed to appear at a Probation/CSP Violation Hearing in General Sessions Court on 6/17/14 at 8:30am in the Spartanburg County Courthouse, Spartanburg, South Carolina.

You may have an attorney at your expense represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Spartanburg County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised there are dangers and disadvantages to self-representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney, you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

At the violation hearing you will have the opportunity to speak, and you may present witnesses or documentary evidence on your behalf. If requested, you will also have the opportunity to confront and cross-examine any witnesses called to testify against you; however, the Department may elect to present affidavits of witnesses or police officers in lieu of testimony. State v. Pauling (Ct. App. 2006). It is your responsibility to have your witnesses and attorney present. If you are released on bond prior to your hearing date, you must report to the Probation Office immediately upon your release.

You are required to be at the hearing as scheduled above. If you do not appear, a bench warrant or failure to appear warrant will be issued for your arrest. Furthermore, the Court may choose to proceed with the hearing in your absence. This directive remains in effect until you are granted leave by the Court.

This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.

Date: 4/13/14

Report to Agent Price
Immediately upon your release
Phone Number (864) 596-2582

[Signature]
Offender's Signature
[Signature]
Agent's Signature



SCDPPPS
Form 26.1

Case No: ___ - GS - ___ - _____

NOTICE OF RIGHTS

A Statement of the Rights of the Accused

You have been charged with a Violation of Probation/CSP and referred to General Sessions Court.

You are advised:

-You have the right to employ counsel to represent you.

-In the event you are financially unable to employ counsel, the State will provide you with counsel by the appointment or with the services of the Public Defender of Spartanburg County. If you desire the State to provide you with counsel, you must apply for counsel. It is your responsibility to contact the Spartanburg County Public Defender's Office if you so desire their services, and you should contact their office within 48 hours of receiving this notice. The address and telephone number are listed below. Your failure to either contact the Public Defender's Office or employ counsel prior to your hearing date will not serve as a basis to continue your hearing and could result in your bond being revoked, resulting in your incarceration. In addition, the Court could determine that by your failing to apply for counsel, you have waived your right to an attorney and proceed with the Violation of Probation/CSP hearing.

This form has been read to the accused, Janice Makinson, in my presence at
11:34 am on this 13th day of April, 2016.

[Signature]
Defendant

[Signature]
Agent

SPARTANBURG COUNTY PUBLIC DEFENDER'S OFFICE
366 N. CHURCH STREET, SUITE 3000, SPARTANBURG, SC 29303
(864) 596-2561

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he/she has been informed of the charges against him/her and the nature thereof, and that he/she is unable to employ counsel. However, the undersigned now stated that he/she does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his/her desire to services of counsel provided by the State at this time, which he/she understands he/she has a right to.

Executed before me on this _____ day of _____,

Defendant

Agent

WITNESSES

Spartanburg County Detention Center

1. SENTENCE MADE

2. REPORT ENDED

3. COIN IS PULLED

4. COIN IS

BY WARRANTS SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. IF APPLICABLE, ATTACH COPY

Computer
Computer

WARRANT NUMBER

Direct Indictment (2013A4210200731)

ACTION OF GRAND JURY

True Bill

Harold O...
Foreperson of Grand Jury
Date: JUN 13 2013

VERDICT

82

Foreperson of Petit Jury
Date:

DOCKET NO. **13-GS-42-2919**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Jamie Anthony Makupson

Indictment for

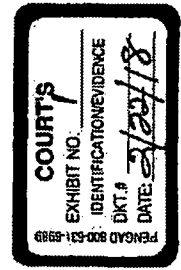
ASSAULT AND BATTERY 2nd Degree

SC Code: 16-3-600 (D) (1)

CDR Code: 3413

Class: MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 20 PM 3:27
M. HOPE BLACKLEY



A CERTIFIED COPY
M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: D.C.
DATED 2/2/16

AK

84 SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OF SPARTANBURG VS.

Jamie Anthony Makupson

INDICTMENT/CASE#: 2013GS4202919

A/W#: 2013A4210200731

Date of Offense: 2/26/2013

S.C. Code §: 16-03-0600 (D)(1)

CDR Code #: 3413

Race: B Sex: M Age: 34

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Spartanburg, SC 29306

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was

TO: Assault/Assault and Battery-2nd degree (up to 3 years &/or up to \$2500)

[] CONVICTED OF or [X] PLEADS

in violation of § 16-03-0600 (D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted. [] Lesser Included Offense. [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation. [X] Negotiated Sentence. [] Recommendation by the State.

ATTEST: GRAY, ABEL SC Bar# 76344 Defendant; [Signature] Attorney for Defendant SC Bar# 2596

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] 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 days/months/years and/or payment of \$; plus costs and assessments as applicable*: the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: [X] 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 PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Obtain GED [] Attend Voc. Rehab. or Job Corp. []

Payment Terms: [] Set by SCDPPPS May serve W'E beginning []

Recipient: Substance Abuse Counseling []

*Fine: § 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 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 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(B)(1) (Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90 TOTAL \$ 133.90

Clerk of Court Deputy Clerk [Signature] Court Reporter: [Signature] SCCA 217 (05-2011)

Presiding Judge [Signature] Judge Code: 2137 Sentence Date: 6/28/13

WITNESSES

Spartanburg County Detention Facility

1. SENTENCE MADE

2. REPORT ENDED

3. CARB IDULLED

4. INDEXED

CHECKED WARRANTS

WPD SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. OTHER INFORMATION COPY

Kevin Gots

Computer

Computer

ARREST WARRANT NUMBER

2013A4210200822

ACTION OF GRAND JURY

True Bill

Hauff Dyer

Foreperson of Grand Jury

Date: JUN 13 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

13-GS-42-2920

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE vs.

Jamie Anthony Makupson

Indictment for

THREATENING A PUBLIC OFFICIAL

SC Code: 16-3-1040
 CDR Code: 541
 Class FEL/F

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 JUN 20 PM 3:27
 M. HOPE BLACKLEY

A CERTIFIED COPY

M. Hope Blackley

CLERK OF COURT
 SPARTANBURG COUNTY
 BY: _____ D.C.
 DATED: 2/2/18

RLC

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 13 2013

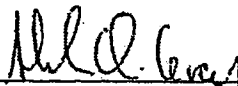
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

THREATENING A PUBLIC OFFICIAL

That Jamie Anthony Makupson did in Spartanburg County on or about March 2, 2013, knowingly and willfully delivered or conveyed to a public official verbal communication which contained a threat to take the life of or to inflict bodily harm upon the public official, Spartanburg County Detention Facility Officer Jordan Guinn and the threat was directly related to the public official's professional responsibilities, by telling the officer he would inflict bodily harm to him, in violation of §16-3-1040, *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

Y OF

SPARTANBURG

VS.

Jamie Anthony Makupson

Computer

INDICTMENT CASE#: 2013GS4202920

CA:

A/W#: 2013A4210200822

Date of Offense: 3/2/2013

Race: B Sex: M Age: 34

S.C. Code §: 16-03-1040

DOB: [redacted] SS#: [redacted]

CDR Code #: 0541

Address: [redacted]
City, State, Zip: Spartanburg, SC 29306

SENTENCE SHEET

DL#: [redacted] SID#: [redacted]
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Threat / Threatening life, person or family of public official (up to 5 years &/or up to \$5000)

in violation of § 16-03-1040 of the S.C. Code of Laws, bearing CDR Code # 0541
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS: Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: [Signature] 76344 [Signature] 2596
GRAY, ABEL SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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 _____

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. 13 months
 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: no contact with victim

Recipient:		\$
*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA 217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2132
Sentence Date: 6/28/13

WITNESSES

1. SENTENCE MADE

Spartanburg Public Safety Department

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. SIGNED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Jay C. Computer
Computer

WARRANT NUMBER

(DI)

ACTION OF GRAND JURY

True Bill

Harold D...
Foreperson of Grand Jury

Date: MAY 03 2013

VERDICT

∞
∞

Foreperson of Petit Jury
Date:

DOCKET NO.

13-GS-42-2321

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 06 2013

TERM

THE STATE

VS.

Jamie Anthony Makupson

Indictment for

ASSAULT AND BATTERY 1st Degree

SC. Code: 16-3-600(C)(1)

CDR Code: 3412

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 PM 4:05
M. HOPE BLACKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 PM 2:20
M. HOPE BLACKLEY

CLERK OF COURT
SPARTANBURG COUNTY
BY: *M. Hope Blackley*
DATED: 2/2/13 D.C.

21

STATE OF SOUTH CAROLINA

CITY OF

SPARTANBURG

VS.

Jamie Anthony Makupson

computer

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4202321

A/W#: Direct Indictment

Date of Offense: 3/11/2012

S.C. Code §: 16-03-0600 (C)(2)

CDR Code #: 3412

Sex: M Age: 34

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Spartanburg, SC 29206

County: [redacted] SID#: [redacted]

DL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

Disposition of the said indictment comes now the Defendant who was

convicted of: Assault / Assault & Battery 1st degree (up to 10 years)

SENTENCE SHEET

[] CONVICTED OF or [X] PLEADS

A violation of § 16-03-0600 (C)(2) of the S.C. Code of Laws, bearing CDR Code # 3412

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State.

ALEXANDRIA D EYLES, SC Bar# 76344 Defendant; Attorney for Defendant: [redacted] SC Bar# 2596

HEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 10 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 5 days/months/years and/or payment of \$ [] ; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] 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. [] > months

[] 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 []

Recipient: []

*Fine:	\$	\$
§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B) (Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90 § (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL	\$	\$ 648.90

[] 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: NO Cashier with Vehicle

Mental Health Counselor

Jugon Mays

[] Appointed PD or appointed other counsel.

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [redacted]

Judge Code: 21321

Sentence Date: 6/28/13

Clerk of Court: Deputy Clerk [redacted]

Court Reporter: [redacted]

WITNESSES

SPARTANBURG CITY POLICE DEPT.

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

CHECKED WARRANTS

ARREST WARRANT NUMBER

7. ASSESSMENT AND

FINE CARD MADE

K-256731 TRAFFIC VIOLATIONS COPY

Computer

Computer

X

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 10-26-07

VERDICT

MARC KITCHENS

2007 NOV -1 AM 10:33

SPARTANBURG COUNTY

Foreperson of Jury

Date: FILED

DOCKET NO.

07-GS-42-5401

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2007 TERM

THE STATE

VS.

JAMIE ANTHONY MAKUPSON

Indictment for

CRIMINAL DOMESTIC VIOLENCE

3rd or subsequent offense

SC Code: 16-25-0020

CDR Code: 3055

Class: Felony

[Signature]

CLERK OF COURT
SPARTANBURG COUNTY

BY: D.C.

DATED 2/2/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 26 2007 the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE 3rd / SUBSEQUENT OFFENSE

That Jamie Anthony Makupson did in Spartanburg County on or about June 19, 2007, cause physical harm or injury, or offer or attempt to cause physical harm or injury, to Leshawn Anderson, a household member or former household member, by punching her in the face, causing the victim to fear for her safety in that the Defendant has two (2) or more prior convictions for Criminal Domestic Violence, all in violation of Code §16-25-0020, *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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
 STATE VS
Jamie Anthony Makupson
 AKA:
 Race: B Sex: M Age: 28
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip: Monetta, SC 29364
 DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-5401
 A/W#: K-256731
 Date of Offense: 4-19-07
 S.C. Code §: 16-25-20
 CDR Code #: 3055

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: CDV 3rd offense (mand. 1yr to 5yrs)

in violation of § 16-25-20 of the S.C. Code of Laws, bearing CDR Code # 3055

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

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

ATTEST:
[Signature] Solicitor Jamie Makupson Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 1 year and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ 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. 50 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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: successfully complete
12.5 hrs program
 Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Recipient:	
*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35.13 (Public Def/Prob)	\$500 \$500.00
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ 3.15
TOTAL	\$ 628.15

J. Camo
 Clerk of Court/ Deputy Clerk
 Court Reporter: Pam Gaucett

[Signature]
 PRESIDING JUDGE
 Judge Code: 129
 Sentence Date: 11-16-07

WITNESSES

James Rice

Spartanburg Public Safety Department

5. SENTENCE MADE

7. RECEIVED Computer

8. CARD PULSED

4. INDEXED

9. CHECKED SIGNATURE

ARREST WARRANT NUMBER

H566202 6. CHECKED SIGNATURE Computer

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

94

Foreperson of Petit Jury
Date:

DOMESTIC NO. **04-GS-42-3610**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 30 2004

TERM

THE STATE

vs.

JAMIE ANTHONY MAKUPSON

Indictment for

CRIMINAL DOMESTIC VIOLENCE

SC Code: 16-25-0020, 0040

CDR Code: 685

Class MIS/UNC

A CERTIFIED COPY
M. Rose
CLERK OF COURT
SPARTANBURG COUNTY
BY: _____ D.C.
DATED 2/2/18

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

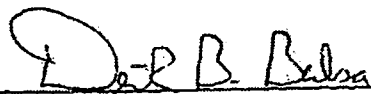
At a Court of General Sessions, convened on AUG 19 2004 the

Grand Jurors of County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE 3rd/ SUB. OFFENSE

That Jamie Anthony Makupson did in Spartanburg County on or about November 2, 2003, cause physical harm or offer or attempt to cause physical harm to Leshawn Anderson, a household member or a former household member, by hitting the victim in the mouth, cutting her lip and/or bruising her left elbow by throwing the victim to the ground, causing the victim to fear for her safety, in that the Defendant has (2) two or more prior convictions of Criminal Domestic Violence, all in violation of Code §16-25-40, *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

Computer

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 VS
JAMIE ANTHONY MAKUSSEN
 AKA:
 Race: B Sex: M Age: 25
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: WELLFORD SC 29385
 DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 04 -GS- 42 3610
 AWW#: HS66202
 Date of Offense: 11/2/03
 S.C. Code §: 16-25-20/40
 CDR Code #: 0161815
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal Domestic Violence 3rd or subsequent (0-3yrs)
 in violation of § 16-25-20/40 of the S.C. Code of Laws, bearing CDR Code # 0161815
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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

ATTEST: David B. Bulon Solicitor Jamie Makussen Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 9 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 90 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ 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. 9 months.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Thonda Shuey, Jr.
 Clerk of Court/ Deputy Clerk
 Court Reporter: Mike Watkins

PRESIDING JUDGE [Signature]
 Judge Code: _____
 Sentence Date: 8/10/04

WITNESSES

1. Moss

2. SENTENCE MADE

Spartanburg City Police Dept.

3. CARD PULLED

1749

4. INDEXED

Spartanburg, SC 29304-1749

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY ARREST WARRANT NUMBER

9864

Computer Computer

DOCKETING 99 CS-42-3768

The State of South Carolina
County of Spartanburg

(07) Holman C. Gossett, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 1999

TERM

THE STATE
vs.

Jamie Anthony Makupson

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

Defendant

Jamie Anthony Makupson
hereby appear in my own proper person and plead guilty to the within indictment or to

Intimidate a Witness

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Person of Grand Jury

VERDICT

Person of Petit Jury

Indictment for
INTIMIDATE A WITNESS

SC Code: 16-9-340
CDR Code:
Class

A CERTIFIED COPY
M. Dose
CLERK OF COURT
SPARTANBURG COUNTY
BY: D.C.
DATED 2/2/18

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

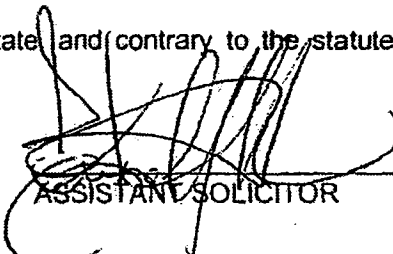
At a Court of General Sessions, convened on JUN 03 1999 the

Grand Jurors of Spartanburg County present upon their oath:

INTIMIDATE A WITNESS

That Jamie Anthony Makupson did in Spartanburg County on or about January 29, 1999, threaten and intimidate one LeShawn Anderson, a victim concerning a pending criminal charge of CRIMINAL DOMESTIC VIOLENCE, in the discharge of her duty as such, by sending a threatening letter to the victim in the mail, in violation of §16-9-340, 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

SOUTH CAROLINA

CITY OF Spartanburg

VS. Jamie Makupson

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

99 -GS- 42 - 3768

A/W#: F-899864

Date of Offense: 1-9-99

S.C. Code § : 16-09-0340

CDR Code #: 314151

AKA: _____
Race: B Sex: M
DOB: _____ Age: 20
SSN: _____
DL#: Never had a lic.
SID#: _____

SENTENCE

PLEA TRIAL

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was Intimidating a witness

in violation of § 16-09-0340 of the S.C. Code of Laws, bearing CDR Code # 314151

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Jamie Makupson
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 2 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 _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.~~

The Defendant is to be given credit for 10 days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
§ 14-1-206 - Assessments 100%..... \$
§ 14-1-211 - Surcharge..... \$
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... \$
County (3%)..... \$
TOTAL..... \$

Clerk of Court/Deputy Clerk Mark Hammond

Court Reporter: Joy Holston

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: October 30 1999

WITNESSES

T. SAAR

1. SENTENCE MADE
SPTRG. PUBLIC SAFETY

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURES

7. ASSESSMENT AND

TRAFFIC VIOLATIONS COPY

ARREST WARRANT NO.

Computer

Computer

ACTION OF GRAND JURY

John Ball
B. J. Suttley
Foreman of Grand Jury

VERDICT

100

Foreman of Petit Jury

Date:

DOCKET NO. 99-GS-42-2055
The State of South Carolina,

County of SPARTANBURG (12)

12/09/98

COURT OF GENERAL SESSIONS

APR 12 1999 TERM

THE STATE

vs.

JAMIE ANTHONY MAKUPSON

Indictment for
CRIMINAL DOMESTIC VIOLENCE

16-25-20

Holman C. Gossett

1. Jamie Anthony Makupson
hereto appear in my own proper person and pleads
guilty to CDV § 3rd
On the within indictment.
Witness
Clerk of Court

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]*
DATED: 2/2/15 D.C.

SOUTH CAROLINA

OF Spartanburg

vs. Janice Makypson

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

99 -GS- 42 - 2055

A/W#: 310586 BB

Date of Offense: April 25, 1998

S.C. Code § : 16-25-20, 40

AKA: _____
Race: B Sex: M
DOB: _____ Age: _____
SSN: _____
DL#: Never Had a Lic.
SID#: _____

CDR Code #: 0161815

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Criminal Domestic Violence 3rd

in violation of § 16-25-20, 40 of the S.C. Code of Laws, bearing CDR Code # 0161815

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Phil A. Guy Solicitor Janice Makypson Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center for a determinate term of 2 ~~days~~ months/years or under the Youthful Offender Act not to exceed _____ year 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 _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for 10 days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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 100%.....\$
§ 14-1-211 - Surcharge.....\$
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI).....\$
County (3%).....\$
TOTAL.....\$

Clerk of Court/Deputy Clerk Mark Hammond
[Signature]
Court Reporter: Joy Holston

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: October 22, 1999
SCCA217 (1/99)

WITNESSES

L.W. Lindsey

Spartbg. Public Safety

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

ARREST WARRANT NO. F626205

8. TRAFFIC VIOLATIONS COPY NONE

Computer

ACTION OF GRAND JURY

James Bill

Gladys A Bush

Foreman of Grand Jury

VERDICT

102

Foreman of Petit Jury

Date:

DOCKET NO. 49-5511

The State of South Carolina,

County of Spartanburg

COURT OF GENERAL SESSIONS
DEC 01 1997

TERM

THE STATE

vs. *CSW*

Jamie Anthony Makupson

Indictment for
Resisting Arrest

Holman C. Gossett

Armed 5/21/97

4-13-98

BW 9987

JAMIE ANTHONY MAKUPSON

hereby appear in my own proper person and plead

guilty to RESISTING ARREST (SECTION A)

the within indictment.

Witness: *Jamie Makupson*
Mark Hammon

Clk of Court

CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]* D.C.
DATED 2/2/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg)

INDICTMENT FOR RESISTING ARREST

NOV 25 1997

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

COUNT ONE — RESISTING ARREST

That Jamie Anthony Makupson did in Spartanburg County
on or about September 9, 1997, knowingly and wilfully oppose and/or resist,
the efforts of L.W. Lindsey, a law enforcement officer of
this State, to make a lawful arrest of the said defendant in violation of §16-9-320(a), *Code of Laws
of South Carolina, (1976)*, as amended.

COUNT TWO — RESISTING ARREST — ASSAULT ON OFFICER

That _____ did in _____ County
on or about _____, knowingly and wilfully assault,
beat or wound one _____, a law enforcement officer of
this State, while resisting the efforts of the said officer to make a lawful arrest of the said defend-
ant, in violation of §16-9-320(b), *Code of Laws of South Carolina, (1976)*, as amended.

COUNT THREE — RESISTING ARREST — DEADLY WEAPON

That _____, seventeen years of age or older did
in _____ County on or about _____, wilfully
and knowingly resist the efforts of a law enforcement officer of this State, to make a lawful arrest
with the use and threat of use of a deadly weapon, to wit: _____, against the officer, when
the said defendant was in possession and/or claimed to be in possession of the said deadly weapon.

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

J. Theodore McCarty
SOLICITOR

104

South Carolina

of

STATE

-VS-

DEFENDANT

Computer

IN THE COURT OF GENERAL SESSIONS

No. 97-GS-42-5511

(326) Arrest

Name of Offense

3-16-98

SCDC# or DOB

James Anthony Makopson

1061614

ID#

Whereas the above named defendant has been charged with violating the conditions of probation ordered on 10-8-98, 19 98 in the Court of General Sessions of Spthg. County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated 1-16-99, 19 98 a copy of which is incorporated by reference.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve 6 months/years of the original 1 months/years sentence identified above, and/or pay \$; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve months/years of the original months/years sentence (and/or) pay \$; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve months/years (and/or) pay \$; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

The defendant has previously served 3 months/years on this sentence.

IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and no inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

Additional Conditions ordered by the Court:

Credit time served since 12-9-99.

MARK HAMMOND

1999 JAN 29 PM 2:54

This 29 day of January, 19 99 Spthg., SC

J.L. [Signature] Presiding Judge Thomas L. Lighter III 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 special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

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 probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by:

Signed: Probationer

Signed this day of 19, at SC.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	IN THE SEVENTH JUDICIAL CIRCUIT
)	
JAMIE A. MAKUPSON)	
APPLICANT,)	
)	
VS.)	PROPOSED ORDER GRANTING
)	POST-CONVICTION RELIEF
THE STATE OF SOUTH CAROLINA)	
)	
RESPONDENT.)	CASE NO: 2017-CP-42-1808
)	

This matter comes before the Court by way of Mr. Makupson's application of post conviction relief filed May 22, 2017, alleging violations of his rights to due process and assistance of counsel in his *pro se* probation revocation. A Conditional Order of Dismissal was filed January 10, 2018. In response to the Conditional Order of Dismissal the Applicant submitted a reply arguing that genuine issues of material fact existed and the PCR action proceeded to a full hearing February 22, 2018, on the issue of whether the Applicant's right to assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the US Constitution was violated.

At the hearing the Applicant testified on his own behalf and Agent Hanna Price, with Spartanburg County Probation, Pardon, and Parole, testified on behalf of the State. The court had before it a copy of the Spartanburg County Clerk of Court Records, Applicant's records from South Carolina Department of Corrections, the probation violation hearing transcript, the Respondent's Application, the Conditional Order of Dismissal, the Applicant's Reply to the Conditional Order of Dismissal, the Notice of Probation Violation Hearing and Acknowledgement of Notice (Court Exhibit 1), Notice of Rights (State's Exhibit 1), and Violation Report (Applicant's Exhibit 1).

PROCEDURAL HISTORY

On June 17, 2016, Mr. Makupson appeared *pro se* before the Honorable R. Keith Kelly for a probation violation hearing and received a revocation in full of five years which he is serving in the South Carolina Department of Corrections.

SUMMARY OF TESTIMONY AT PCR

Applicant's Testimony

Mr. Makupson testified that he did not understand that he was facing revocation when he went before Judge Kelly. He said he asked for a new agent and his agent told him that he could ask the Judge. He took issue with the allegations that had been presented by his agent in his violation hearing and denied reviewing his violation report or knowledge of the Agent's recommendation going into the hearing. He admitted he had prior convictions and had been on probation before. Mr. Makupson stated he went through the sixth grade, had his GED, and attended college. He said he would have wanted an attorney and thought he would have benefitted from an attorney to represent him at his probation violation hearing.

Agent's Testimony

Agent Price was called to the stand on behalf of the State and testified that Mr. Makupson was a difficult probationer who had violated his probation in past cases. She testified in detail about his violations. She stated she had notified him of the allegations, his hearing date and his right to an attorney at the proceedings. She referred to the Notice Form, Citation and Notice of Rights in the court records and entered as exhibits. (Court Ex. 1 & State Ex. 1) She agreed that the violation report showed her recommendation was two years revocation and was signed by her supervisor, but stated that she had not

pointed that out to the sentencing judge because by the time of the hearing she no longer agreed with that recommendation. (Applicant's Ex.1)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard and weighed the testimony at the post-conviction relief hearing. In accordance with S.C. Code Ann. § 17-27-80 this court finds that the probation violation in this case proceeded without a valid waiver of the right to counsel guaranteed by the Sixth and Fourteenth Amendments of the US Constitution.

The transcript of the probation violation hearing clearly shows Mr. Makupson was not advised of his right to counsel and there was no inquiry into whether there was a knowing and intelligent waiver of that right. Mr. Makupson informed the court that he had not seen the violation report and did not know the allegations against him. The probation agent then states that Mr. Makupson told her he didn't feel like getting an attorney and would represent himself. (Revocation p.3) There is no further mention of the right to counsel and no inquiry to determine whether Mr. Makupson was adequately informed of his right to counsel or warned of the dangers of self-representation. Further, Mr. Makupson was not advised that he could invoke his Sixth Amendment right and request the court appoint an attorney to represent him.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before [s]he can be validly convicted and punished by imprisonment." *State v. Thompson*, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct.App.2003) (citing *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 45

L.Ed.2d 562 (1975)). Our courts have found that, "The right to counsel attaches in probation revocation hearings." *Salley v. State*, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991). Further, "Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *McKnight v. State*, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995) (quoting *Strickland v. Washington*, 466 U.S. 668, 692, 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674, 696 (1984)).

While one can waive their right to counsel, "[t]he courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights." *Thompson*, 355 S.C. at 262, 584 S.E.2d 131, 134 citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461, 1466 (1938); *Pitts v. North Carolina*, 395 F.2d 182, 188 (4th Cir.1968). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)). To assure a knowing and intelligent waiver of the right to counsel, the record must demonstrate that the court advised the accused of his right to counsel and adequately warned of the dangers of self representation. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The record in this case does not comply with *Faretta*.

The State argues that the signed forms titled Notice of Probation Violation Hearing and Acknowledgement of Notice (Court Exhibit 1) and Notice of Rights (State's Exhibit 1) fulfill the court's obligations under the first prong of *Faretta*. This is not the finding of this Court. The law is clear that after notice is established there must be a determination whether there was a knowing and intelligent waiver by the

accused. *Thompson*, 355 S.C. at 261-62, 584 S.E.2d at 134-35. The Applicant's signature on the South Carolina Probation, Pardon, and Parole's Notice of Rights form does not amount to a valid waiver of his right to counsel, especially as in this case where Mr. Makupson signed the Notice of Rights but did not sign the Waiver of Right to have appointed counsel at the bottom of that form. (State's Exhibit 1). As in *State v. Brannon*, this record gives no assurance that Mr. Makupson's waiver of counsel is knowing and intelligently made and contains no findings on the matter. *State v. Brannon*, 407 S.C. 293, 755 S.E.2d 117 (2014).

Mr. Makupson's case is distinguishable from *State v. Bryant* because in that case the record showed the court informed the probationer of his right to a lawyer and there was an affirmative verbal waiver of the right to counsel followed with the further instruction that the right to counsel could be invoked at any time. *State v. Bryant*, 383 S.C. 410, 680 S.E.2d 11 (S.C. App. 2009) The issue there was whether after satisfying the first prong, the failure to specifically address the dangers and disadvantages of appearing pro se as required by *Faretta's* second prong could support a knowing and voluntary waiver. To assist in this inquiry into the second prong, the court looked into ten factors to determine whether the accused fully understood the dangers of self-representation based on her background or being appraised of her rights by some other source. *Id.* at 14.

Here, Mr. Makupson was not given notice of his right to counsel as required by the first prong of *Faretta*. Therefore, it is not necessary to engage in the ten part inquiry into to whether his background, education and physical and mental health gave him an understanding of the dangers of self-representation as required in the second prong of

Faretta. However, given his testimony, demeanor at the hearing, and educational background this court is not convinced Mr. Makupson understood or appreciated the dangers of self-representation.

CONCLUSION

Based on the above, this Court finds that the probation violation in this case proceeded without a valid waiver of the right to counsel guaranteed by the Sixth and Fourteenth Amendments of the US Constitution.

IT IS THEREFORE THE ORDER OF THIS COURT that the applicant's revocation and sentence be vacated and his case remanded to General Sessions. If the State chooses to appeal this Order, I retain jurisdiction to address the appeal bond.

AND IT IS SO ORDERED this _____ day of _____, 2018.

Judge Michael G. Nettles
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG

Jamie A. Makupson, #281398,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2017-CP-42-1808

**ORDER OF DISMISSAL
 WITH PREJUDICE**

CLERK OF COURT
 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Jamie A. Makupson (Applicant) on May 22, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 22, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Probation Agent Hanna Price ("Agent") (Counsel) also testified. This Court had before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the probation revocation transcript, Applicant's probation records, the PCR application, Respondent's return and motion to dismiss, the signed conditional order of dismissal, and Applicant's reply to the conditional order of dismissal.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2013, the Spartanburg County Grand Jury indicted Applicant for assault and battery, first degree (2013-GS-42-2321).

Applicant was subsequently indicted in June 2013 for assault and battery, second degree (2013-GS-42-2919) and threatening life, person, or family of public official, teacher, or principal (2013-GS-42-2920).

Robert B. Hall, Esquire, represented Applicant. Alexandria Denise Lyles, Esquire, prosecuted the case. On June 28, 2013, Applicant pleaded guilty as indicted to all charges before the Honorable J. Mark Hayes, II. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for assault and battery, first degree, provided that upon the service of five years, the balance was suspended with probation for five years, three years for assault and battery, second degree, and five years for threatening the life, person or family of public official, teacher, or principal. Applicant did not appeal his conviction or sentence.

On April 13, 2016 an probation citation was issued for Applicant for violations of probation. The affidavit stated that Applicant was to be arrested for the following reasons:

1. Failure to report as instructed having missed an office visit;
2. Failure to refrain from changing residence without prior consent of the Agent;
3. Failure to refrain from the use of controlled substances having tested positive for THC, cocaine, and opiates on 3/8/16 and 3/15/16;
4. Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment;
5. Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation;
6. Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation;
7. Failure to pay one time \$20 drug test fee;
8. Failure to follow the advice and instructions of the supervising Agent;
9. Failure to comply with special condition of anger management counseling.

On June 17, 2016, the Applicant appeared before the Honorable R. Keith Kelly for a probation revocation hearing. Judge Kelly revoked Applicant's probation and required him to serve his remaining five year sentence. Applicant did not appeal his probation revocation or sentence.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Did the Court of General Sessions have subject matter jurisdiction to revoke Applicant's probation?"
 - a. "According to the revocation order it states that a citation dated 4-4-16 was issued. It also state that, 'after hearing the evidence and being duly advised, in the presence of the defendant (now Applicant), I find the above named defendant has violated the following conditions of probation. ... This statement would have us believe that citation with an affidavit was issued in this case, when in fact, there was no citation or affidavit issued before hearing or served nor presented to the Applicant in this case. Applicant has never seen a citation nor warrant up to this date. Without the citation or probation warrant rendered this court is without subject matter jurisdiction and the revocation is void."
2. "Did Applicant waive his right to counsel at the probation revocation hearing?"
 - a. "In this case, Applicant had to proceed *pro se* as no counsel was appointed to represent nor were the required procedures or steps taken by the court so as to ensure that Applicant was making a free and voluntary waiver of his right to counsel and that he understood the dangers of self-representation."

SUMMARY OF PCR HEARING

At the start of the hearing, Respondent requested a ruling on its motion to dismiss. With regard to Applicant's first issue, Respondent argued that the circuit court obviously had subject matter jurisdiction to revoke Applicant's probation and citing to State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Respondent also argued because it is clear from the record the circuit court had jurisdiction, there is no genuine issue of material fact requiring a hearing and therefore, Respondent is entitled to summary judgment. S.C. Code Ann. § 17-27-70(c) (Court may "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.") As to Applicant's second issue, Respondent argued that based on State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (2009), there was no genuine issue of material fact to necessitate a hearing and

Respondent was entitled to judgment as a matter of law based solely on the record before the Court. Respondent also admitted Applicant's certified convictions from Spartanburg County and a "Notice of Probation Violation Hearing and Acknowledgment of Rights" and "Notice of Rights" (referred to herein collectively as "the Notices"), as Court's Exhibit 1 and State's exhibit 1, respectively, in support of her argument.

Respondent countered and distinguished Bryant from the instant matter, because in Bryant, the defendant was informed on the record of his right to an attorney, whereas in this case, Applicant was not advised of neither his right to an attorney nor the dangers of proceeding *pro se*. Applicant also cited State v. Brannon, 407 S.C. 293, 755 S.E.2d 117 (2014), and State v. Moore, 399 S.C. 641, 732 S.E.2d 871 (2012).

This Court denied Respondent's motion to dismiss and allowed Applicant to proceed with a hearing to prove his allegations.

I. Applicant testified to the following:

Applicant testified went to report to his probation agent and change his address, however when he arrived, Agent was revoking his probation. Agent accused him of failing two drug tests, but Applicant denied ever having two drug tests. Applicant admitted he failed the March 15 drug test. Applicant denied he ever missed a reporting visit.

Applicant testified that during his revocation hearing, the judge asked him if he had a lawyer, but Agent jumped in and answered the question without allowing Applicant to respond. Applicant also testified he had made numerous attempts to gain lawful employment, but rather Agent did not help him seek employment. Applicant also testified he gave Agent copies of job applications he had filled out and submitted. Applicant testified he completed anger management while in the

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SPARTANBURG COUNTY
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Department of Corrections and gave Agent the proof of completion. Applicant completed the 6th grade, has received a GED, and has attended college.

II. Agent testified to the following:

Agent has been working as a probation agent since August of 2013. Agent explained the reasons for each violation:

Agent testified she had a reporting visit with Applicant on October 6, 2015 at which time she advised him his next reporting date would be December 1, 2015. However, Applicant failed to report that day. Agent does not generally violate for missing a reporting appointment, unless it is compounded by other violations or it becomes a recurring problem.

On April 30, 2014, Agent made contact with Applicant's grandmother and aunt who lived at the residence Applicant had provided to probation as being his residence. His grandmother and aunt informed Agent that their residence was Applicant's mailing address, but that he did not live there and was not welcomed there. When Agent confronted Applicant about this issue, Applicant repeatedly told her he lived there. Later, Applicant gave Agent another address. At this time, as well as other office visits, Applicant became aggressive and disrespectful and had to be escorted out of the office.

Agent testified Applicant failed his initial drug test taken on March 8, 2016. Applicant informed her he would pass a second drug test if given a week. Agent drug tested him a week later on March 15, 2016, and Applicant failed again. Applicant did not pay for either drug test.

Agent testified that despite her giving Applicant resources to help find lawful employment, Applicant never obtained lawful employment nor provide her with proof of any attempts to seek lawful employment. Agent also testified Applicant informed her that he turned down job offers from Lear and Excel because of transportation concerns.

Agent testified Applicant never paid any of his probation fees, court fees, or drug test fee. Agent does not violate offenders solely on monetary obligations. However, Applicant had violated in many ways and therefore, Agent was required, by her office's policy, to include all violations.

Agent also testified Applicant never completed his court ordered anger management counseling. Agent was aware Applicant had completed an anger management course required in the Department of Corrections, but informed him that he was also required to take the anger management course outside of the Department of Corrections.

Agent testified that Applicant's demeanor was angry, disrespectful, loud, and aggressive on multiple occasions requiring both a meeting with her supervisor as well as being escorted out of the building. Agent also testified that Applicant had been on probation five prior times to this instant probation term and had violated probation every time. Counsel testified she made a mistake on the probation records in the section for "Agent's recommendations." Her recommendation was never a "partial revocation of 2 years, toll time form [sic] date of Warrant. Continue Probation. [unclear] satisfies supervision fee arrearages" as indicated on the probation revocation.

Agent testified she served Applicant with State's Exhibit 1, the Notices, on April 16, 2016. Agent testified she witnessed Applicant sign both documents. Agent also testified Applicant also showed up to her office a few days before the violation hearing thinking he was scheduled for court. Agent had to inform him the hearing was the following day at the courthouse. Agent also asked Applicant if he had gotten an attorney, to which Applicant told her no. Agent asked him why and Applicant shrugged his shoulders. Agent asked him if he didn't because he didn't feel like it, to which Applicant responded "yes." Agent asked Applicant if he was going to represent himself, to which Applicant stated "yes." Agent had her case notes with her and was using them to assist her in testifying.

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 SECRETARIES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that the circuit court lacked subject matter jurisdiction to revoke his probation or that he did not knowingly and voluntarily waive his right to probation revocation counsel.

Subject matter jurisdiction

This Court finds Applicant has failed to prove the circuit court lacked subject matter jurisdiction to revoke his probation. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Since Applicant was sentenced to probation after his guilty plea in the circuit court, the circuit court had subject matter jurisdiction to hear his subsequent probation violation matter. Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant claims that there was no citation or affidavit issued regarding his arrest for probation violations. The probation records include the probation citation issued on April 13, 2016 with an affidavit signed by Agent, on April 4, 2016 and served on April 13, 2016. Additionally, Agent testified Applicant became aggressive so she gave him a copy of the citation and had him escorted out of the office (See also, notation in probation records). Therefore, Applicant has failed to present any evidence to refute the record that

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he was served with the probation citation and affidavit in addition to failing to show that the probation revocation court did not have the authority to preside. Therefore, this Court denies and dismisses this allegation.

Waiver of probation revocation counsel

This Court finds Applicant knowingly and voluntarily waived his right to counsel at his probation revocation hearing. In criminal cases, defendants have the right to waive counsel; however, the trial court has discretion to determine if that waiver was a knowing and intelligent waiver. State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (2009) (citing State v. Thompson, 355 S.C. 261-62, 584 S.E.2d at 134-35 (2003)). Specifically, in addition to reviewing the entire record, the court also looks to ten factors in order to determine if the defendant has sufficient background to understand the dangers of self-representation. Bryant, 383 S.C. 410, 415, 680 S.E.2d 11, 13 (2009). Such factors include, but not limited to, whether the defendant was previously involved in criminal trials, whether he knew the nature of the charge and of the possible penalties, and whether he knew he would be required to comply with trial rules of procedure. Id. This analysis aids the court in determining whether the defendant had sufficient background to waive counsel or was apprised of his rights by another source. Id.

In regard to waiving counsel in a probation revocation hearing, the court first looks to the exchange between the court and the probation agent during the hearing. Id. at 416, 680 S.E.2d at 14. If the court does not explicitly address the specific dangers and disadvantages of proceeding *pro se* as required by Ferretta¹, the Court notes that the next inquiry is whether the defendant signed a probation notice by his probation officer, acknowledging in part that he may have an attorney represent him and if he could not afford one, one would be appointed on his behalf. Bryant, 383 S.C.

¹ Ferretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

at 410, 416-17, 680 S.E.2d 11, 14. The probation notice typically states that it is the defendant's responsibility to ensure that his or her witnesses and attorney appear at the hearing. Id. In Bryant, the Supreme Court held that though the court did not explicitly warn the defendant of the dangers and disadvantages of self-representation, Bryant knowingly and voluntarily waived her right to an attorney by signing a probation notice prior to the hearing informing her of her rights. The Court also found that because of her extensive experience in the criminal justice system, specifically in probation court, as well as previous representation for the underlying charges, she had a sufficient background to waive counsel and was apprised of her rights by some other source. Id. at 417, 680 S.E.2d at 14.

This case is identical to Bryant. On April 13, 2016, Applicant signed a "Notice of Probation Violation Hearing and Acknowledgement of Rights" and a "Notice of Rights," informing him of his rights. This was over two months before the revocation hearing on June 17, 2016. This notice expressly stated that he may have an attorney represent him, and that if he could not afford one, one would be appointed for him. In fact, the notice contained the exact verbiage as that in the Bryant case. The responsibility fell on Applicant to make arrangements to hire an attorney to appear at the probation revocation hearing, if desired, as acknowledged in the signed probation notice.

In addition to the Notices signed by Applicant, the record demonstrates Applicant's extensive familiarity with the criminal justice system, including extensive experience with probation. Further, Agent testified credibly that they had a discussion about Applicant getting an attorney to which Applicant nonchalantly indicated he did not feel like getting an attorney and was going to represent himself. Applicant also testified he had a (or some) college education.

Applicant's reliance on Brannon and Moore is misplaced. In Brannon, Brannon violated probation for a number of unsatisfied monetary obligations and failing to "follow his probation

agent's advice." Brannon, 407 S.C. at 295, 755 S.E.2d at 118. Brannon signed a waiver form which indicated his decision to proceed without counsel and waived his right to a probation revocation hearing. Without a hearing, the circuit court revoked Brannon's probation and sentenced him to five months' imprisonment. Id. The Court of Appeals stated "the absence of any finding whatsoever" that Brannon knowingly and voluntarily waived his right to a hearing and an attorney was troubling and remanded the matter for a determination of whether Brannon had knowingly and voluntarily waived his right to a probation revocation hearing and an attorney. Id., 407 S.C. at 296, 755 S.E.2d at 118.

As a threshold matter, this Court notes Bryant is not only more analogous to the case at bar, but also carries more authoritative weight from the Supreme Court, whereas Brannon is very distinguishable and was decided by the Court of Appeals. Additionally, Brannon signed a form waiving his right to an attorney and a hearing, essentially relinquishing all rights to even challenge the violations with which he had been accused. Brannon did not have a hearing or an opportunity to appear before the circuit court regarding the revocation of his probation. It is also worth noting that all of Brannon's violations were of a monetary nature. In this case, Applicant did appear for probation revocation hearing in which he admitted some of his violations and denied others. Also Applicant's violations were much more extensive than Brannon's and involved more than judge monetary violations.

Secondly, there was *nothing* in the record to support Brannon waived his rights other than a signed pre-printed waiver. Here, the record shows Applicant was apprised of his right to an attorney and the dangers of proceeding *pro se* by his probation agent through the signed Notices, that Applicant has an extensive criminal history and experience with probation, that Applicant possessed sufficient education to waive his right to counsel, and Applicant even told Agent he did not get an

attorney because he did not feel like it.

In Moore, the issue was whether trial counsel was ineffective for strategically deciding to waive Moore's right to a jury trial and instead opt for a bench trial. Moore testified in his PCR that he did not know he was going to have a bench trial and wanted a jury trial. The Court found the defendant's waiver of his constitutional right to a jury trial was unsupported by the record, in that there was no colloquy with the trial court or trial counsel and that trial counsel did not recall if he definitely explained the differences between a jury and bench trial or whether Applicant understood the distinction. Additionally, Moore had only completed the seventh grade and could not read or write.

Moore is not controlling in this case as it is distinguishable from the case at bar for many reasons. The first being the issue was whether Moore's attorney was ineffective in advising Moore about his constitutional right to a jury trial and the distinction between a jury and bench trial. The issue in this case was Applicant's knowing and voluntary waiver of probation counsel. Secondly, there was nothing in the record that indicated Moore made a knowing or voluntary waiver of his right to a jury trial. Here, as discussed more fully above, there is ample evidence of a knowing and voluntary waiver of his right to probation counsel in the record. Lastly, Moore was significantly less educated than Applicant.

Because the record shows Applicant was apprised of his right to an attorney and the dangers of proceeding *pro se* by his probation agent through the signed Notices, Applicant's extensive criminal history and experience with probation, and Applicant possessed sufficient education to waive his right to counsel, this Court finds Applicant made a knowing and voluntary waiver of his right to probation counsel.

Lastly, this Court notes that Agent's testimony, based on her extensive case notes, was more

CLERK OF DISTRICT COURT
 STATE OF MICHIGAN
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 HOPE BLOCHLEY

credible than that of Applicant regarding the specific facts surrounding the probation violations. Applicant even admitted to failing a drug test. Based on the evidence presented, this Court finds Applicant was in fact in violation of the terms of his probation for each one of the nine enumerated violations and the revocation was proper. As such, this Court fails to see how an attorney could have assisted Applicant in receiving a different outcome from the probation revocation hearing. Therefore, this court finds that the allegation of denial of probation revocation counsel is without merit and it is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

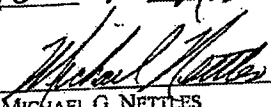
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CLERK OF COURT
 SPANISH LAKE COUNTY
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 H. HOPE BLACKLEY

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of March, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Seventh Judicial Circuit

 South Carolina

CLERK OF COURT
 SPARTANBURG COUNTY
 2018 MAR 26 AM 10:20
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

2018 MAR 29 PM 2:29

JAMIE A. MAKUPSON
APPLICANT,

FILED - CLERK OF COURT
PAUL B. HARRIS, CLERK
GREENVILLE CO. SC

VS.

MOTION TO ALTER OR AMEND
THE JUDGEMENT

THE STATE OF SOUTH CAROLINA

RESPONDENT.

CASE NO: 2017-CP-42-1808

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on March 26, 2018. The Applicant takes issue with the findings of fact and conclusions of law set fourth resulting in the denial of post-conviction relief in his case.

The PCR action proceeded to a full hearing February 22, 2018, solely on the issue of whether the Applicant's right to assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the US Constitution was violated. The transcript of the probation violation hearing clearly shows Mr. Makupson was not advised by the judge of his right to counsel and there was no inquiry by the judge into whether there was a knowing and intelligent waiver of that right. Mr. Makupson informed the court that he had not seen the violation report and did not know the allegations against him. The probation agent then states that Mr. Makupson told her he didn't feel like getting an attorney and would represent himself. (Revocation p.3) There is no further mention of the right to counsel and no inquiry to determine whether Mr. Makupson was adequately informed of his right to counsel or warned of the dangers of self-representation. Further,

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SPARTANBURG COUNTY
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M. HARRIS, CLERK

Mr. Makupson was not advised by the hearing judge that he could invoke his Sixth Amendment right and request the court appoint an attorney to represent him.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before [s]he can be validly convicted and punished by imprisonment." *State v. Thompson*, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct.App.2003) (citing *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). Our courts have found that, "The right to counsel attaches in probation revocation hearings." *Salley v. State*, 306 S.C. 213, 215, 410 S.E.2d 921, 922 (1991). Further, "Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *McKnight v. State*, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995) (quoting *Strickland v. Washington*, 466 U.S. 668, 692, 84 S.Ct. 2052, 2067, 80 L.Ed.2d 674, 696 (1984)).

While one can waive their right to counsel, "[t]he courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights." *Thompson*, 355 S.C. at 262, 584 S.E.2d 131, 134 citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461, 1466 (1938); *Pitts v. North Carolina*, 395 F.2d 182, 188 (4th Cir.1968). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)). To assure a knowing and intelligent waiver of the right to counsel, the record must demonstrate that the court advised the accused of his right to counsel and adequately warned of the dangers of self representation. *Faretta*

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SPARTANBURG COUNTY
2018 APR 24 PM 1:11
M. ROPELACKLE

v. *California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The record in this case does not comply with *Faretta*.

The signed forms titled Notice of Probation Violation Hearing and Acknowledgement of Notice (Court Exhibit 1) and Notice of Rights (State's Exhibit 1) do not fulfill the court's obligations under the first prong of *Faretta*. The Applicant's signature on the South Carolina Probation, Pardon, and Parole's Notice of Rights form does not amount to a valid waiver of his right to counsel, especially as in this case where Mr. Makupson signed the Notice of Rights but did not sign the Waiver of Right to have appointed counsel at the bottom of that form. (State's Exhibit 1). As in *State v. Brannon*, this record gives no assurance that Mr. Makupson's waiver of counsel is knowing and intelligently made and contains no findings on the matter. *State v. Brannon*, 407 S.C. 293, 755 S.E.2d 117 (2014).

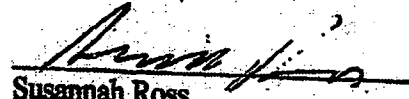
Mr. Makupson's case is distinguishable from *State v. Bryant* because in that case the record showed the court informed the probationer of his right to a lawyer and there was an affirmative verbal waiver of the right to counsel followed with the further instruction that the right to counsel could be invoked at any time. *State v. Bryant*, 383 S.C. 410, 680 S.E.2d 11 (S.C. App. 2009) The issue there was whether after satisfying the first prong, the failure to specifically address the dangers and disadvantages of appearing pro se as required by *Faretta's* second prong could support a knowing and voluntary waiver. To assist in this inquiry into the second prong the court looked into ten factors to determine whether the accused fully understood the dangers of self-representation based on her background or being appraised of her rights by some other

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source. *Id.* at 14. Here, Mr. Makupson was not given notice of his right to counsel as required by the first prong of *Faretta*.

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 29 day of March, 2018.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 APR -4 PM 12:42
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Jamie Makupson, SCDC # 281398,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-1808

RETURN TO APPLICANT'S MOTION
 TO ALTER OR AMEND JUDGMENT

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 2018 MAY 23 AM 10:55
 M. HOPE BRACKLEY
 CLERK OF COURT
 SPARTANBURG COUNTY

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter or Amend the Judgment" filed on April 4, 2018, would respectfully show unto this Court:

I. Procedural History

Jamie Makupson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2013, the Spartanburg County Grand Jury indicted Applicant for assault and battery, first degree (2013-GS-42-2321). Applicant was subsequently indicted in June 2013 for assault and battery, second degree (2013-GS-42-2919) and threatening life, person, or family of public official, teacher, or principal (2013-GS-42-2920).

Robert B. Hall, Esquire, represented Applicant. Alexandria Denise Lyles, Esquire, prosecuted the case. On June 28, 2013, Applicant pleaded guilty as indicted to all charges before the Honorable J. Mark Hayes, II. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for assault and battery, first degree, provided that upon the service of five years, the balance was suspended with probation for five years, three years for assault and battery, second degree, and five years for threatening the life,

person or family of public official, teacher, or principal. Applicant did not appeal his conviction or sentence.

On April 13, 2016, a probation citation was issued for Applicant for violations of probation. The affidavit stated that Applicant was to be arrested for the following reasons:

1. Failure to report as instructed having missed an office visit;
2. Failure to refrain from changing residence without prior consent of the Agent;
3. Failure to refrain from the use of controlled substances having tested positive for THC, cocaine, and opiates on 3/8/16 and 3/15/16;
4. Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment;
5. Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation;
6. Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation;
7. Failure to pay one time \$20 drug test fee;
8. Failure to follow the advice and instructions of the supervising Agent;
9. Failure to comply with special condition of anger management counseling.

On June 17, 2016, Applicant appeared before the Honorable R. Keith Kelly for probation revocation hearing. Judge Kelly revoked Applicant's probation and required him to serve his remaining five year sentence. Applicant did not appeal his probation revocation or sentence.

II. Current Post-Conviction Relief Action

On May 22, 2017, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on February 22, 2018, at the Spartanburg County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Assistant Attorney General Valerie Giovanoli of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf at the evidentiary hearing and the State presented testimony from Probation Agent Hanna Price.

By written order signed March 20, 2018 and filed March 26, 2018, Judge Nettles denied and dismissed the application with prejudice. On April 4, 2018, Applicant filed a "Motion to Alter or Amend the Judgment." This Return follows.

III. Applicant's Motion to Alter or Amend

In his motion to alter or amend, Applicant argues this Court should reverse its prior rulings and grant post-conviction relief. Specifically, Applicant argues he was not properly advised of his right to counsel and urges this court to reverse its prior ruling to the contrary. In sum, Applicant requests the Court reverse its prior rulings and grant him post-conviction relief based on arguments that were already properly presented and denied by the Court in its order of dismissal.

In response, Respondent submits this Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Applicant is not requesting either an alteration or amendment to the Court's order, but rather, Applicant is asking the Court to reverse its decision. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to, but not ruled upon by, the trial court).

Respondent submits this Court's ruling are legally correct and supported by the record, and that this Court should deny Applicant's request to reconsider, alter or amend its ruling.

IV. Relief Requested

WHEREFORE, having made its Return to the motion, Respondent requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BY:

Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

May 16, 2018

RECEIVED
CLERK OF COURT
2018 MAY 21 AM 10:56
MILPUE BLANCKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

JAMIE MAKUPSON,
S.C.D.C. No. 281398,

2017-CP-42-1808

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

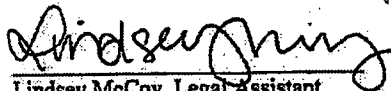
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to Applicant's Motion to Alter or Amend Judgment in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 16th day of May, 2018.


Lindsey McCoy, Legal Assistant
For Respondent

CLERK OF COURT
SPARTANBURG COUNTY
MAY 21 AM 10:56
LINDSEY MCCOY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jamie Makupson, SCDC # 281398,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

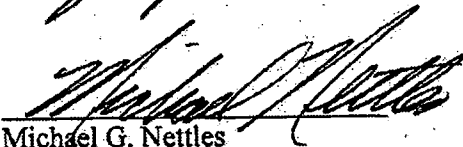
) Case No. 2017-CP-42-1808

) **ORDER DENYING APPLICANT'S**
) **MOTION TO ALTER OR AMEND**
) **JUDGMENT**

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend the Judgment." Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on March 26, 2018. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

AND IT IS SO ORDERED this 3 day of July, 2018.


Michael G. Nettles
Presiding Judge
Seventh Judicial Circuit

 South Carolina

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CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL 12 AM 9:05
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

Indictment No. _____ - GS - _____ - _____

Probation/Community Supervision Program
Violation

State of South Carolina

Warrant/Citation # _____ - _____ - _____

V. Vanille Makypson

**NOTICE OF PROBATION/CSP
VIOLATION HEARING AND
ACKNOWLEDGMENT OF NOTICE**

You are hereby directed to appear at a Probation/CSP Violation Hearing in General Sessions Court on 6/17/16 at 8:30am in the Spartanburg County Courthouse, Spartanburg, South Carolina.

You may have an attorney at your expense represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Spartanburg County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised there are dangers and disadvantages to self-representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney, you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

At the violation hearing you will have the opportunity to speak, and you may present witnesses or documentary evidence on your behalf. If requested, you will also have the opportunity to confront and cross-examine any witnesses called to testify against you; however, the Department may elect to present affidavits of witnesses or police officers in lieu of testimony. State v. Pauling (Ct. App. 2006). It is your responsibility to have your witnesses and attorney present. If you are released on bond prior to your hearing date, you must report to the Probation Office immediately upon your release.

You are required to be at the hearing as scheduled above. If you do not appear, a bench warrant or failure to appear warrant will be issued for your arrest. Furthermore, the Court may choose to proceed with the hearing in your absence. This directive remains in effect until you are granted leave by the Court.

This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.

Date: 4/13/16

Report to Agent Price
Immediately upon your release
Phone Number (864) 596-2582

Vanille Makypson
Offender's Signature

[Signature]
Agent's Signature

SCDPPPS
Form 26.1

Case No: ___ - GS - ___ - _____

NOTICE OF RIGHTS

A Statement of the Rights of the Accused

You have been charged with a Violation of Probation/CSP and referred to General Sessions Court.

You are advised:

-You have the right to employ counsel to represent you.

-In the event you are financially unable to employ counsel, the State will provide you with counsel by the appointment or with the services of the Public Defender of Spartanburg County. If you desire the State to provide you with counsel, you must apply for counsel. It is your responsibility to contact the Spartanburg County Public Defender's Office if you so desire their services, and you should contact their office within 48 hours of receiving this notice. The address and telephone number are listed below. Your failure to either contact the Public Defender's Office or employ counsel prior to your hearing date will not serve as a basis to continue your hearing and could result in your bond being revoked, resulting in your incarceration. In addition, the Court could determine that by your failing to apply for counsel, you have waived your right to an attorney and proceed with the Violation of Probation/CSP hearing.

This form has been read to the accused, James Makupson, in my presence at 11:34 am/pm this 13th day of April, 2016.

[Signature]
Defendant

[Signature]
Agent

SPARTANBURG COUNTY PUBLIC DEFENDER'S OFFICE
366 N. CHURCH STREET, SUITE 3000, SPARTANBURG, SC 29303
(864) 596-2561

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he/she has been informed of the charges against him/her and the nature thereof, and that he/she is unable to employ counsel. However, the undersigned now stated that he/she does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his/her desire to services of counsel provided by the State at this time, which he/she understands he/she has a right to.

Executed before me on this _____ day of _____.

Defendant

Agent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

2013 -GS- 42-2321

Court

STATE
-vs-

Jamie Anthony Makupson

STANDARD CONDITIONS OF PROBATION

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my sentencing or release, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess, nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
4. I shall not possess or purchase any firearms or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or Local Law, and I shall immediately contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee and any other fees as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution or other payments, and the service of any period of incarceration.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. I agree to pay restitution and a statutory collection fee payable to the Department of Probation, Parole, and Pardon Services as directed by Agents of the Department. (20% collection fee charged)
12. Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to a search or seizure, without a search warrant, based on reasonable suspicions, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

I hereby certify that this statement of Conditions has been read and explained to the Probationer listed above and he/she has agreed to them.

I hereby certify that the Conditions above have been explained fully to me and in agreement thereto, I attach my signature:

This 28 day of June, 2013

Jamie Makupson
Offender

ACM

Agent

[Redacted]
Offender's Address

180 Library Street, Spartanburg, S.C. 29306

Agent's Address

Spartanburg S.C. 29306
Offender's Address

2582

Agent's Phone Number

[Redacted]
Offender's Phone Number

I understand that I must REPORT NOW to the Probation Office or immediately upon my release from jail or prison I understand I need to bring \$50 for my 1st month Supervision Fee.

X Jamie Makupson

PROBATION CITATION

No. C-42-16-0177

SOUTH CAROLINA V. JAMIE ANTHONY MAKUPSON	COUNTY: SPARTANBURG	
	SCDC # 281398	SID # 01061614

TO: JAMIE ANTHONY MAKUPSON

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place TBD	Room TBD
	Date and Time

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged Violation of probation sections 1, 2, 3, 5, 7, 9, 10 and special conditions as ordered under cause number 13-GS-42-02321 by the Spartanburg County Court of General Sessions.
--

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.
--

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

SPARTANBURG, South Carolina	Probation and Parole Agent Hanna Price	Agent # 1013
Date 4/4/2016	<i>[Signature]</i>	

A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.

Place	Date and Time 4-13-16 11:30 am
	Serving Officer's Signature <i>[Signature]</i>

Sworn to and subscribed before me this 13 day of April, 2016

[Signature]
 Signature of Notary Public

My Commission Expires 12/22/25

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of SPARTANBURG

Personally appeared before me, Hanna Price, who first being duly sworn, deposes and says that JAMIE ANTHONY MAKUPSON did within this county and State on the 4 day of April, 2016, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Violation of probation sections 1, 2, 3, 5, 7, 9, 10 and special conditions as ordered under cause number 13-GS-42-02321 by the Spartanburg County Court of General Sessions.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Failure to report as instructed having missed an office visit on 12/1/15.
Failure to refrain from changing residence without prior consent of the Agent. On 4/30/2015, the Agent was informed by the homeowner, that the offender did not reside at [redacted] as he reported, but just uses it for mailing purposes. The Agent did not know the offender's true location or address at that time, and the offender is considered to have absconded supervision. The offender did not inform the Agent until pressed at his next office visit on 5/20/2015 where his actual residence was.
Failure to refrain from the use of controlled substances having tested positive for THC, Cocaine and Opiates on 3/8/16 and 3/15/16.
Failure to work diligently at a lawful occupation, having never provided the Agent with proof of employment, or proof of any effort to obtain employment.

Sworn to and subscribed
before me this 4 day of
April, 2016

[Signature]
Affiant

[Signature]
Signature of Notary Public

My Commission Expires: 12/22/25

Addendum

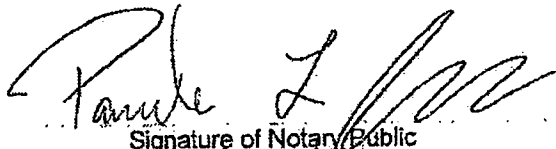
139

Failure to pay supervision fee being \$600 in arrears and having never made a payment on this account since beginning probation on 03/16/15.
Failure to pay court fine being \$180 in arrears and having never made a payment on this account since beginning probation on 03/16/15.
Failure to pay one time \$20 drug test fee.
Failure to follow the advice and instructions of the supervising Agent.
Failure to comply with special condition of Anger Management Counseling. The offender has been referred on 3/23/15, 7/28/15, 10/6/15 and 1/12/16 and has failed to show up for any classes to date.



Affiant

Sworn to and Subscribed before me
this 4 day of April, 2016.



Signature of Notary Public

12/27/25
My Commission Expires

WITNESSES

- 1. SENTENCE MADE
- 2. REPORT ENDED Spartanburg Public Safety Department
- 3. CARD PULLED Computer
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE Computer
- 8. TRAFFIC VIOLATION COPY

WARRANT NUMBER

(D)

ACTION OF GRAND JURY

True Bill

Handwritten Signature
 Foreperson of Grand Jury
 Date: MAY 03 2013

VERDICT

DOCKET NO. 13-GS-42-2321

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 06 2013

TERM

THE STATE

vs.

Jamie Anthony Makupson

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600(C)(1)
 CDR Code: 3412
 Class FE/E

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAY -9 PM 4:05
 M. HOPE BLACKLEY

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAY -9 PM 2:00
 M. HOPE BLACKLEY

Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 03 2013

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

ASSAULT AND BATTERY 1st Degree

That the Defendant, Jamie Makupson, did in Spartanburg County on or about March 11, 2012, commit an assault and battery on the victim, Titania Stephens, by unlawfully,

- (a) Injuring the victim, and the act:
 - (i) involved nonconsensual touching of the private parts of an adult, either under or above clothing, with lewd and lascivious intent; or
 - (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or
- (b) did offer or attempt to injure the victim with the present ability to do so, and the act:
 - (i) was accomplished by means likely to produce death or great bodily injury; or
 - (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

To wit: by striking her about the body with his fists in violation of §16-3-600(C)(1), *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.

Alexandria Lyles
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Jamie Anthony Makupson

AKA:

Race: B Sex: M Age: 34

DOB: 979 SS#:

Address:

City, State, Zip: Spartanburg, SC 29306

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery 1st degree (up to 10 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4202321

A/W#: Direct Indictment

Date of Offense: 3/11/2012

S.C. Code § : 16-03-0600 (C)(2)

CDR Code #: 3412

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0600 (C)(2) of the S.C. Code of Laws, bearing CDR Code # 3412

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: ALEXANDRIA D LYLES, SC Bar# 76344 Defendant; Attorney for Defendant: [Signature], SC Bar# 2596

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 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 5 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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. 15 months

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

PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____

Obtain GED
Attend Voc. Rehab. or Job Corp. _____

Payment Terms: _____

May serve W/E beginning _____
Substance Abuse Counseling

Set by SCDPPPS _____

Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

Recipient: _____

\$ _____ paid to Public Defender Fund

*Fine:	\$
§ 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 47.9 (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
Proviso 90.5 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 648.90

Other: No Contact with Victim, Mental Health Counseling, August Management
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature]
Judge Code: 21321
Sentence Date: 6/28/13

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

County of Spartanburg
STATE VS.

Indictment Number: 13 -GS- 42 - 02321

Probation CW#: 1-42-10-0177

Name of Original Offense: Assault & Battery 1st

Original A/W#: Direct Indictment

Date of Original Offense: 3/11/12

Conviction S.C. Code §: 16-03-0600

Conviction CDR Code #: 3, 4, 1, 2

Original Sentence: 10yrs ss to 5yrs & 5yrs probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/28/13 in the Court of General Sessions of Spartanburg County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on N/A, as set forth in the attached warrant(s) or citation(s) dated 4/4/16.

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) 1, 2, 3, 5, 7, 9, 10 & special conditions.

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 10 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 herein 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 active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first-degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:
 - Department fees (arrears)
 - Fines and other fees (arrears/balance)
 - Restitution (and 20%) (arrears/balance)
- Additional Conditions ordered by the Court: Terminate Probation

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 JUN 17 PM 3:30
 M. HOPKINS LACKLEY

- 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.
- The defendant has previously served 5 months/years on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 17th day of June, 2016
Spartanburg SC

R. Keith Kelly
Presiding Judge
Honorable R. Keith Kelly 11th 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 _____ day of _____ at Spartanburg SC