

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

Sep 16 2021

S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-000564

Unpublished Opinion No. 2021-UP-121 (S.C. Ct. App. Filed April 21, 2021)

The State of South Carolina.....Respondent

v.

George Cleveland III.....Petitioner

PETITIONER'S RECORD ON APPEAL

George Cleveland III

400 Hunter Street

Seneca, S.C. 29678

864-784-7223

gcleveland7475@gmail.com

Pro se Petitioner

South Carolina Department of Probation, Parole & Pardon Services

Mr. Matthew C. Buchanan, General Counsel

Post Office Box 50666

Columbia, S.C. 29250

Attorney for the Respondent

INDEX

Court of Appeals Order Denying Motion to Stay.....1,3

Court of Appeals Order Granting Motion to Amend Notice of Appeal2

Court of Appeals Order Denying Motion to Stay Probation3

Court of Appeals Order Granting Motion to Extend Time to File Initial Brief and Designation of Matters to be Included in Record on Appeal4

Supreme Court Order Denying Motion to Stay Probation
.....5

Court of Appeals Order Granting Motion to Extend Time to File Initial Brief and Designation of Matters to be Included in Record.....7

Anderson County General Sessions Court Order Denying Motion to Reconsider Sentence.....8

Sentence Sheets Connected to 90-day Jail Sentences.....9-10

Petitioner’s Motion to Reconsider Jail Sentence11-19

Petitioner’s Notice of Appeal20-23

Petitioner’s Motion to Stay Appeal Pending Circuit Court Decision on Rule 59 (e) SCRCF.....24-26

Petitioner’s Emergency Motion to Stay Probation and 90-Day Jail Sentence Pending Appeal.....27-31

Petitioner’s Motion for Leave to File the Attached Motion to Stay the Filing of Petitioner’s Initial Brief Out of Time in the Court of Appeals.....32-36

Trail Transcripts of the February 23, 2018 Restitution Arrears Hearing.....37-53

July 06, 2018 letter regarding the ordering of the transcript written by the Clerk of the Court of Appeals54

Order of the U.S. Court of Appeals for the Fourth Circuit Court Granting Motion to Extend filing of the Brief.....55

Copies of S.C. Circuit Court Reporter Manual.....56-58

Title Page of the Transcript of the Feb 23, 2018 missing name of the Probation Agent representing that Office.....	59
Title Page of the Transcript of the Feb 23, 2018 showing the name of the Probation Agent representing that Office	60
Petitioner’s Motion to Challenge the Feb 23, 2018 Trial Transcript filed in the Circuit Court	61-63
Emails between me and Circuit Court Reporter Lisa Scott dated June 11, 2018, and June 15, 2018.....	64-65
Circuit Court Reporter Manual.....	66-67,71
Certificate of Reporter for the last page of the Feb 23, 2018 Trial Transcript for The Restitution Arrears Hearing	68,70
Title page of the Feb 23, 2018 Restitution Arrears Hearing where the name of the Probation Agent is missing	69
Certificate of Service for the Motion Challenging the Feb 23, 2018 Trial Transcript Showing Circuit Court Reporter was Served by Mail	72-73
Motion Challenging the Feb 23, 2019 Trial Transcript Coversheet.....	74
Financial Probation Citation from the Oconee County Probation Office	75-76
Art I § 19 of the S.C. Const. Prohibiting Imprisonment for Debt.....	77
April 02, 2018 letter from the S.C. Court of Appeals Clerk’s Office requesting The Respondent to file a Return to Petitioner’s Motion to Emergency Stay	78
Business Address for Duvall Ford which shows the dealership is located in Georgia, not South Carolina	80-81
Arrest Warrants Connected to this Instant Petition showing the vehicles were reported stolen out of Georgia, and possessed in South Carolina.....	82-83
Petitioner’s Initial Brief	84-94
Court of Appeals Unpublished Opinion	95-97
Petitioner’s Petition for Rehearing	98-103

Court of Appeals Denying Rehearing Petition104

R. p. 1

The South Carolina Court of Appeals

The State, Respondent,

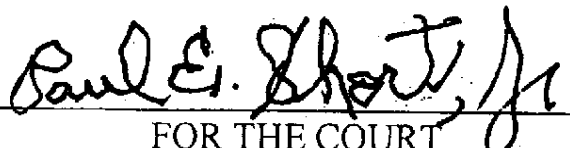
v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

ORDER

After careful consideration, the motion to stay is denied. *See* Rule 246(a), SCACR ("The service of a notice of appeal by a criminal defendant shall operate as a stay of the execution of the sentence until the appeal is finally disposed of; provided, however, a sentence of confinement shall not be stayed until the defendant has posted bail under S.C. Code Ann. 18-1-80 and -90 (1985).").


FOR THE COURT

Columbia, South Carolina

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire

FILED

April 5, 2018

R. p. 2

The South Carolina Court of Appeals

The State, Respondent,

v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

The Honorable R. Lawton McIntosh
Greenville County
Trial Court Case No. 2012GS2307504

ORDER

The appellant had filed a motion to amend his notice of appeal. The appellant's motion is granted. Our records show the transcript has been ordered. The appellant is to notify the respondent and Court when the transcript has been received so that our records may reflect the correct due date for the appellant's initial brief and designation of matter.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire

FILED
May 18, 2018

R.p. 3

The South Carolina Court of Appeals

The State, Respondent,

v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

ORDER

After careful consideration, Appellant's emergency motion to stay is denied. As this court previously noted in its April 5, 2018 order, the service of a notice of appeal by a criminal defendant does not operate as a stay of the execution of the sentence unless the defendant posted bail under sections 18-1-80 and -90 of the South Carolina Code Annotated. *See* Rule 246(a), SCACR; *State v. Gibbs*, 353 S.C. 226, 577 S.E.2d 454 (2003).


FOR THE COURT

Columbia, South Carolina

cc:

George Cleveland, III

Matthew C. Buchanan, Esquire

FILED

June 13, 2018

The South Carolina Court of Appeals *R.p. 4*

The State, Respondent,

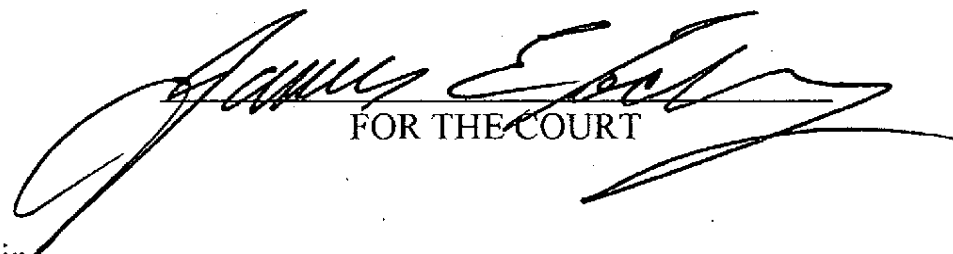
v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

ORDER

Appellant has filed two motions, which this court construes as motions for an extension of time to serve and file Appellant's initial brief and designation of matter. The request for an extension of time is granted. Appellant's initial brief and designation of matter shall be served and filed within thirty days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire

FILED
September 6, 2018

R.P.S

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001272

ORDER

Petitioner has filed an Emergency Motion for Stay of Probation while his appeal is pending before the court of appeals. The court of appeals has previously denied the same motion. The motion is denied.

<i>State Beatty</i>	_____	C.J.
<i>John Kitchings</i>	_____	J.
<i>Kaye L. Heam</i>	_____	J.
<i>John Cannon Jr</i>	_____	J.
<i>Seamus</i>	_____	J.

Columbia, South Carolina

September 24, 2018

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire
The Honorable Jenny Abbott Kitchings

Rip 7

The South Carolina Court of Appeals

The State, Respondent,

v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

The Honorable R. Lawton McIntosh
Greenville County
Trial Court Case No. 2012GS2307504

ORDER

The request for an extension to serve and file the initial brief of appellant and designation of matter is granted and extended until January 18, 2018. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire

FILED
January 4, 2019

R.P. 8

STATE OF SOUTH CAROLINA)
)
 State of South Carolina)
)
 Plaintiff)
 Vs.)
)
 George Cleveland III)
)
 Defendant)

IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT

ORDER DENYING MOTION TO RECONSIDER
SENTENCE

WARRANT NO.: 2012-GS-23-07504

RECEIVED
 APR 06 2018
 SC Court of Appeals

The Motion to Reconsider Sentence on case number 2012-GS-23-07504 is DENIED without the necessity of a hearing.

Anderson, SC
March 22, 2018

[Handwritten Signature]

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

A TRUE COPY
 MAR 26 2018
[Signature]
 ANDERSON CLERK OF COURT

FILED-CLERK'S OFFICE
 ANDERSON SC
 2018 MAR 23 AM 8:37
 COMMON PLEAS AND
 GENERAL SESSIONS

County of OCONEE
 STATE VS
GEORGE CLEVELAND III
 AKA _____
 Race Black Sex Male
 DOB 11/03/1978
 SSN: 251397475
 SID#: 01005002

2018 - GS 23 - 97537
 Probation C/W#s: C-37-17-9059
 Name of Original Offense: FALSIFYING VIN NUMBER
 Original A/V#: N201731
 Date of Original Offense: 08/21/2012
 Conviction S.C. Code § 16-21-0040(A)(2)
 Conviction CDR Code # 0 / 5 / 3 / 5
 Original Sentence: 5 YRS. SDP

R.P. 10
~~_____~~

ORDER

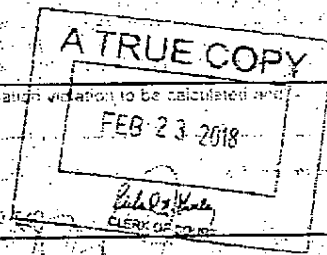
The above named defendant has been charged with violating the conditions of probation ordered on 11/05/2013 in the Court of General Sessions of GREENVILLE County, under the probation conditions ordered by the Court in previous probation order(s) issued on _____ as set forth in the attached warrants, or to support said 10/08/2017 After hearing the evidence and being duly advised in the presence of the defendant, I find that the above named defendant has violated the following conditional of probation: 7, 9, 10, AND 11

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve _____ 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 90 days _____ of the original sentence and/or pay \$ 0; 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 §2016-040 (statutory) if convicted of first degree criminal sexual conduct with a minor or least not discretionary if convicted of any other applicable sex offense against a minor.
- Financial Obligations. Order satisfied:
 - Department fees _____
 - Fines and other fees _____
 - Restitution (and 20% interest) _____
 - Restitution (and 20% interest) _____

Additional Conditions ordered by the Court:
- Toll White License
- Restriction Morris

- 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 13 DAYS months/years of the sentence.
- The defendant was previously placed on active electronic monitoring pursuant to §2016-040.



This 23 day of July 2018 at WALHALLA, SC
 Presiding Judge _____ Judicial Circuit _____

You are hereby advised that under the law the Court may at any time revoke or modify the probation, without any further conditions, a second violation of a condition of probation and to a maximum of 12 years. At any time within the period of your probation, the Court may require you to serve all or part of the original sentence imposed. This is not to be taken as an indication that the Court and the Department of Corrections intend to comply with your probation and the conditions of the attached probation order during the period of the probation. I have reviewed a copy of the Court order and its restrictions.

Offender's Sign: Rufus
 Signed this 23 day of July 18 at WALHALLA

R.p. 11

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE OF SOUTH
CAROLINA,

PLAINTIFF,

VS.

GEORGE CLEVELAND III,
DEFENDANT.

IN THE COURT
OF GENERAL SESSIONS

DEFENDANT'S MOTION
TO RECONSIDER
FEBRUARY 23, 2018
SENTENCE

1. MAY IT PLEASE THE COURT: George Cleveland III, proceeding pro se respectfully submits this motion to reconsider the February 23, 2018, 90 DAY JAIL sentence in the Anderson county detention center on the following grounds:

1-1. the 90 DAY JAIL sentence for being behind on restitution is unconstitutional under Art. 1 § 19 of the S.C. Const. because restitution is a debt;

1-2. S.C. code Ann. § 24-21-430 required this court to determine my ability

1.

R.p. 12

is due from one person to another, whether money, goods, or services, AND whether payable AT present OR AT A FUTURE TIME." Ex parte HOLLMAN 79 S.C. 9, 60 S.E. 1914 (1908), restitution is a debt which is NOT punishable by imprisonment under Ex parte, id., AND Art. 1 §19 of the S.C. CONST.; therefore, the 90 day jail sentence for willfully failing to pay restitution was BARRED, see Exhibits 2-3, see also Exhibit 5-6.

S.C. CODE ANN. §24-21-430

REQUIRED THIS COURT TO
DETERMINE MY ABILITY
TO PAY THE RESTITUTION

6. This court failed to determine my ability to pay the restitution by not even mentioning the fact that my Ave. of \$350.00 a week; my \$100.00 electric bill, \$100.00 car insurance, \$130.00 for health insurance, short term disability AND hospital confinement \$400.00 for groceries, \$400.00 gas, AND \$300.00 for legal fees, see

R.p.13

Exhibit 4 (Supporting Declaration)
 but § 24-21-430, required this
 court to determine my ability to
 pay; accordingly, this court overlooked
 the requirement under § 24-21-
 430, to determine my ability
 to pay.

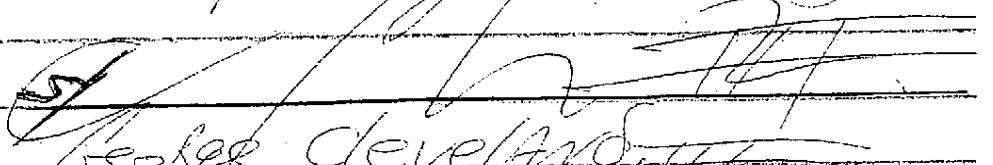
THE DIVER ACT U.S.C.A. §§
 2312, 2313 BARRED THIS
 COURT FROM JURISDICTION

7. This court ruled that it had jurisdiction
 without explaining under what legal
 authority that gave this court
 jurisdiction despite my argument
 that this court lacked jurisdiction
 under the Diver Act U.S.C.A.
 §§ 2312, 2313 because the
 vehicles I was in possession
 of stolen vehicles crossed state
 lines whereas, the vehicles were
 stolen from Georgia, and recovered
 and possessed by me in South
 Carolina; therefore, this court lacked
 jurisdiction to sentence me to
 90 days of jail in the Anderson
 County Detention Center.

4.

R.P. 14

Respectfully Submitted,


George Cleveland
Anderson County Detention Center
1009 DAVID Lee Coffee Place
Anderson, S.C. 29625

DATED: MARCH 16, 2018

6.

Rep. 15

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE OF SOUTH
CAROLINA
PLAINTIFF,

IN THE COURT
OF GENERAL SESSION

VS.
GEORGE CLEVELAND III,
DEFENDANT.

DEFENDANT'S
CERTIFICATE OF
SERVICE

I, George Cleveland III, certifies that on the date below by and through the Anderson County Detention Center personnel, my motion to reconsider the February 23, 2018 90 day sentence, and supporting exhibits with prepaid United States postage to the following:

S.C.D.P.P.S.
OFFICE OF OFFENDER ACCOUNT REVIEW AND COLLECTION
c/o MR. HERWARD A. HINTON
Post Office Box 50666
Columbia, S.C. 29250

Rep. 16

is due from one person to another, whether money, goods, or services and whether payable at present or at a future time." *EX PARTE HOLLMAN* 79 S.C. 9, 60 S.E. 1914 (1908), restitution is a debt which is not punishable by imprisonment under *EX PARTE* 10, and Art. 1 §19 of the S.C. Const.; therefore, the 90 day jail sentence for willfully failing to pay restitution was barred, see Exhibits 2-9, see also Exhibit 5-6.

S.C. CODE ANN. §24-21-430

REQUIRED THIS COURT TO
DETERMINE MY ABILITY
TO PAY THE RESTITUTION

6. This court failed to determine my ability to pay the restitution by not even mentioning the fact that my Ave. of \$350.00 a week, my \$100.00 electric bill, \$100.00 CAR INSURANCE, \$130.00 FOR HEALTH INSURANCE, short term disability AND hospital confinement, \$400.00 FOR GROCERIES, \$400.00 GAS, AND \$300.00 FOR LEGAL FEES, see

R.P. 17

Exhibit 4 (Supporting Declaration)
 but § 24-21-430, is required this
 court to determine my ability to
 pay; Accordingly, this court overlooked
 the requirement under § 24-21-
 430, to determine my ability
 to pay.

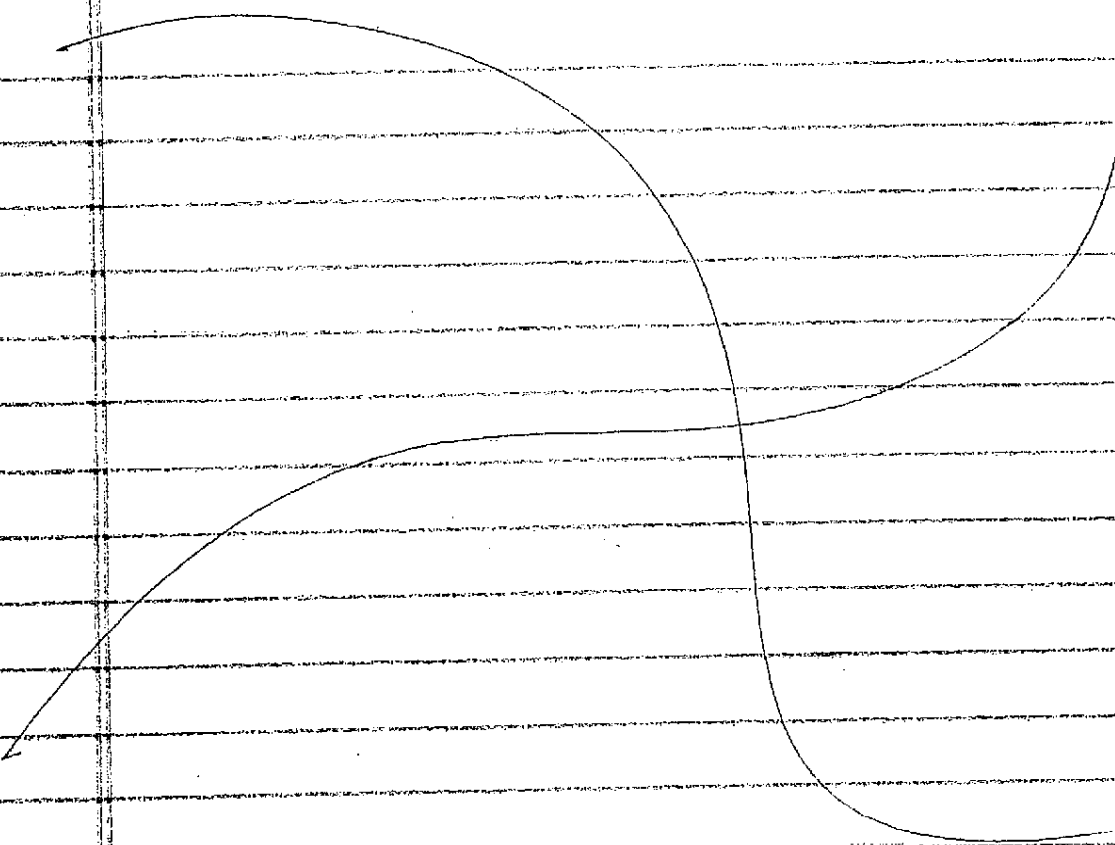
THE DIVER ACT U.S.C.A. §§
 2312, 2313 BARRED THIS
 COURT FROM JURISDICTION.

7. This court ruled that it had jurisdiction
 without explaining under what legal
 authority that gave this court
 jurisdiction despite my argument
 that this court lacked jurisdiction
 under the Diver Act U.S.C.A.
 §§ 2312, 2313 because the
 vehicles I was in possession
 of stolen vehicles crossed state
 lines whereas, the vehicles were
 stolen from Georgia, and recovered
 and possessed by me in South
 Carolina; therefore, this court lacked
 jurisdiction to sentenced me to
 90 days of jail in the Anderson
 County Detention Center.

Ref. 18

8. I Request that this Court take judicial notice of my Dyer Act Argument that are part of the Record in my P.C.R. cases in Oconee and Greenville Counties;
- 8.1. Oconee County P.C.R. 2015-CP-718
- 8.2. Greenville County P.C.R. 2014-CP-23-1895.
9. Based on the foregoing facts, I pray for the following relief:
10. WHEREFORE, GRANT MY MOTION to reconsider the FEBRUARY 23, 2018 90 day Jail sentence;
11. ORDER the Anderson County Detention Center to Release me immediately respectively.
12. Order Any Additional relief this Court deems just, proper, and/or impartial.

R.p. 19



Respectfully Submitted,

~~George Cleveland~~

Anderson County Detention Center
1009 DAVID LEE COFFEY PLICE
ANDERSON, S.C. 29625

DATED: MARCH 16, 2018

6.

RECEIVED

MAR 30 2018

SC Court of Appeal

NOTICE OF APPEAL IN GENERAL
SESSIONS COURT

Rp. 20

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS

R. LAWTON McINTOSH; CIRCUIT COURT JUDGE
PROBATION CITATION NO. C-37-17-0059
A/W No. (S) 2012A2330200168; N 201731

ORIGINAL SENTENCE ~~IN~~ GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

GEORGE CLEVELAND III APPELLANT,

vs.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON
SERVICES, (S.C.D.P.P.S.); AND
SOUTH CAROLINA,

RESPONDENTS.

NOTICE OF APPEAL IN GENERAL
SESSIONS COURT

R.p. 21

CONTINUED

RECEIVED
MAR 30 2018
SC Court of Appeals

S.C.D.P.P.S.
OFFICE OF GENERAL COUNSEL
Post office Box 50666
COLUMBIA, S.C. 29250.
ATTORNEY FOR THE RESPONDENTS

~~GEORGE CLEVELAND III~~
ANDERSON COUNTY DEN. CENTR
1009 DAVID LEE COFFEE PLACE
ANDERSON, S.C. 29625
PROSE APPELLANT

I, George Cleveland, III, Appeals the 90 Day
JAIL sentence for falling behind on Restitution
payments imposed by Circuit Court Judge Lawton
McINTOSH on February 23, 2018, And Received

R.p. 22

by me on MARCH 03, 2018 (on MARCH 14, 2018,
I mailed to the Anderson County clerk's
office, my Rule 59(e) SCRPC Motion to
Reconsider the FEBRUARY 23, 2018 90 DAY
JAIL-sentence which is pending; A separate
motion will be filed in this court to STAY
the Appeal pending the outcome of my pending
motion. (F.B.I.D.) R.p.p. 2-3.

The ORIGINAL sentence of 10 years; suspende
to 6 years imprisonment and 5 years probation
was imposed by circuit court Judge EDWARD
Miller in the Greenville County General
Sessions Court on November 05, 2013. My
probation is supervised out of the oconee
County, SC. Probation office in WALTHALLA,
S.C. R.p.p. 2-3.

2.

Rp. 23

Respectfully Submitted;

~~George Cleveland III~~

Anderson County Den. Center
1009 DAVID LEE COFFEE PLACE
ANDERSON, S.C. 29625

DATED: MARCH 27, 2018 3.

APPELLANT'S MOTION TO STAY
APPEAL PENDING CIRCUIT COURT
DECISION ON RULE 59(e) MOTION

RECEIVED
MAR 30 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS

R.P. 24

R. LANTON McINTOSH; CIRCUIT COURT JUDGE
PROBATION CITATION No. C-37-17-0059
A/W No. (S) 2012A2330200168; N201731
ORIGINAL SENTENCE IN GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

GEORGE CLEVELAND III, Appellant,

vs.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON
SERVICES, (S.C.D.P.P.S.); AND
SOUTH CAROLINA,

RESPONDENT

APPELLANT'S MOTION TO STAY Rp. 25
APPEAL PENDING CIRCUIT COURT
DECISION ON RULE 59(e) MOTION

MAY IT PLEASE THE COURT: George
Cleveland ~~III~~, proceeding pro se in the
Above captioned case, respectfully request
that this court GRANT MY STAY IN
THIS Appeal until circuit court Judge R.
LAWTON McINTOSH Rules on my Rule
59(e) scrcp motion mailed on MARCH 14
2018 to the Anderson County clerk's office
As the initiation of this Appeal is the Attached
motion to Release me on bail, AND stay
the Probation pending the outcome of

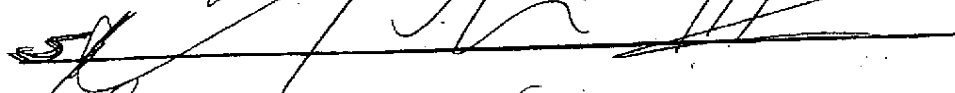
This Appeal. R. p. 4-3

R.p. 26

WHEREFORE; GRANT THIS INSTANT MOTION
AND STAY THIS APPEAL PENDING THE OUTCOME
OF MY APPEAL PENDING IN THE ANDERSON
COUNTY CLERK'S OFFICE (GENERAL SESSIONS
DIVISION).

ORDER ANY ADDITIONAL RELIEF THIS COURT
DEEMS JUST, PROPER, AND/OR IMPARTIAL.

Respectfully Submitted,



George Cleveland III
ANDERSON COUNTY DEN CENTER
11009 DAVID LEE COFFEE PLACE
ANDERSON, S.C. 29625

~~DATED~~: MARCH 27, 2018 2.

SC COURT OF APPEALS ^{Appellate case}
 NO. 2018-000564
 APPELLANT'S EMERGENCY MOTION
 TO STAY PROBATION AND 90 DAY
 JAIL SENTENCE PENDING THE R.P. 27
 OUTCOME OF THIS INSTANT
APPEAL

RECEIVED
 APR 02 2018
 SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS

R. LAWTON MCINTOSH; CIRCUIT COURT JUDGE
 PROBATION CITATION NO. C-37-17-0059
 A/W NO. (S) 2012A2330200168; N201731
ORIGINAL SENTENCE IN GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

GEORGE CLEVELAND III, Appellant,
 vs.
 SOUTH CAROLINA DEPARTMENT OF
 PROBATION, PAROLE, AND PARDON
 SERVICES (SCDPPS), AND SOUTH CAROLINA, Respondent.

SC COURT OF APPEALS APPELLATE
CASE NO. 2018-000564
APPELLANT'S EMERGENCY MOTION
TO STAY PROBATION AND 90-DAY
JAIL SENTENCE PENDING THE R.P. 28
OUTCOME OF THIS INSTANT
APPEAL

MAY IT PLEASE THE COURT: George
Cleveland, III, proceeding pro se in the
above captioned case request that this
stay the probation supervised out of the
WALHALLA, S.C. office AND the remainder
of my 90 day jail sentence pending
the outcome of this instant appeal on
the following grounds:

ART 1 § 19 OF THE S.C. CONST. BARRED CIRCUIT
COURT JUDGE LAWTON MCINTOSH FROM SENTENCING

1.

S. C. COURT OF APPEALS; Appellate case no
 2018-000564
 Me to 90-days in jail for falling behind
 on my restitution because it's a debt;
 P.P. 29
 ("No person shall be imprisoned for
 debt.") S.C. CONST. ART. I § 19. Repeal

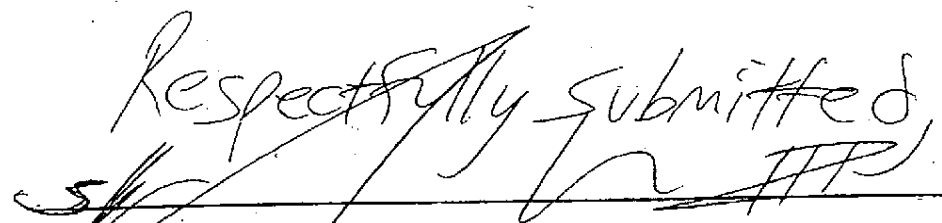
Restitution is A "debt" is that
 which is due from one person to
 another whether money, goods, or
 services, and whether payable at
 present or at a future time." ~~EX PART~~
 HOLLMAN 79 S.C. 9, 60 S.E. 19, 14 (1908)

I submit, there is an substantial chance
 this court will agree with my argument
 that my 90 day jail sentence for
 owing restitution is unconstitutional

S.C. COURT OF APPEALS; Appellate case
No. 2018-000564
UNDER ART. 1 § 19 OF THE S.C. CONST.
ID; BECAUSE ART. 1 § 19 OF THE S.C.
CONST. PROHIBITS THE JAIL SENTENCE
FOR THE RESTITUTION. ~~F~~BID. R.P. 30

WHEREFORE; GRANT MY ~~INSTANT~~ INSTANT MOTION
AND STAY THE REMAINDER OF MY
PROBATION SENTENCE, AND THE REMAINDER
OF MY 90 DAY JAIL SENTENCE IN THE
ANDERSON COUNTY, S.C. DETENTION
CENTER; 1009 DAVID LEE COFFEE PLACE;
ANDERSON, S.C. 29625 PENDING THE
OUTCOME OF THIS INSTANT APPEAL. R.P. 2-3-5.
ORDER ANY ADDITIONAL RELIEF THIS COURT SEEMS
JUST, PROPER, AND/OR IMPARTIAL.

Rp. 31

Respectfully submitted,


George Cleveland III
Anderson County Courthouse
1009 DAVID Lee Coffee PLACE;
Anderson, SC 29625

DATED: MARCH 27, 2018

4.

**APPELLANT'S MOTION FOR LEAVE TO FILE THE ATTACHED MOTION TO STAY THE
FILING OF APPELLANT'S INITIAL BRIEF OUT OF TIME**

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

R.P. 32

APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS
R. Lawton McIntosh, Circuit Court Judge

RECEIVED

PROBATION CITATION No. C-37-17-0059

AUG 07 2018

A/W No. (s) 2012A2330200168; 2012652307505; N2018-031
ORIGINAL SENTENCE FROM GREENVILLE COUNTY

SC Court of Appeals

APPELLATE CASE NO. 2018-000564

George Cleveland, III,Appellant

v.

South Carolina Department of Probation, Parole, and Pardon Services, and
The State of South Carolina,Respondents

George Cleveland, III, *pro se*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Pro se Appellant

S.C.D.P.P.P.S.

Matthew C. Buchanan, General Counsel

Post Office Box 50666

Columbia, S.C. 29250

Attorney for the Respondents

R.p. 33

APPELLANT'S MOTION TO FILE MOTION TO STAY FILING OF INITIAL BRIEF**OUT OF TIME:**

MAY IT PLEASE THE COURT: George Cleveland, III, proceeding *pro se*, respectfully submits this Motion to file the attached Motion to Stay the filing of my Initial Brief, and Matters to be Included in the Record *out of time* as the Initial Briefing, and the designation of matters to be included in this Appeal were due **July 23, 2018**, see Exhibit 1 (July 06, 2018 letter from the Clerk of the S.C. Court of Appeals) on the grounds that all my time was devoted to filing Briefs in another case in the United States Court of Appeals for the Fourth Circuit. *George Cleveland, III v. State of South Carolina; No. 18-6691*, see also Exhibit 2; consequently, my time, and resources were focused on another legal deadline, and a lot more work involved in preparing for the other case, *id*, and that I'm respectfully requesting that this Court *Grant this instant Motion to file the attached Motion to Stay the filing of my Initial Brief, and designation of matters to be included in the record out of time.*

Respectfully submitted,

s/

George Cleveland, III, *pro se*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: July 31, 2018

Rp. 34

**APPELLANT'S MOTION FOR LEAVE TO STAY THE
FILING OF APPELLANT'S INITIAL BRIEF**

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS

R. Lawton McIntosh, Circuit Court Judge

PROBATION CITATION No. C-37-17-0059

A/W No. (s) 2012A2330200168; 2012652307505; N201731

ORIGINAL SENTENCE FROM GREENVILLE COUNTY

APPELLATE CASE NO. 2018-000564

George Cleveland, III,Appellant

v.

South Carolina Department of Probation, Parole, and Pardon Services, and
The State of South Carolina,Respondents

George Cleveland, III, *pro se*
400 Hunter Street
Seneca, S.C. 29678
Cell no. 864-784-7223
Email: gcleland7475@gmail.com
Pro se Appellant

S.C.D.P.P.P.S.
Matthew C. Buchanan, General Counsel
Post Office Box 50666
Columbia, S.C. 29250
Attorney for the Respondents

RECEIVED
AUG 07 2018
SC Court of Appeals

R.p. 35

Appellant's Motion to Stay the Filing of the Initial Brief

MAY IT PLEASE THE COURT: George Cleveland, III, proceeding *pro se* in the above captioned case, respectfully request that this Court Grant this Motion to Stay the filing of my Initial Brief, and Designation of the Matters on Appeal until after Circuit Judge McIntosh has decided my transcript challenge pursuant to the provisions in the *South Carolina Court Reporting Manual. XIII (C). CUSTODY AND CONTROL OF THE RECORD* ("*Further review of the record may be permitted by the presiding judge upon written request...*"). Exhibits 1-2.

The Filed Motion in the Anderson County General Sessions Court is attached to this Motion, see Exhibits 6-20.

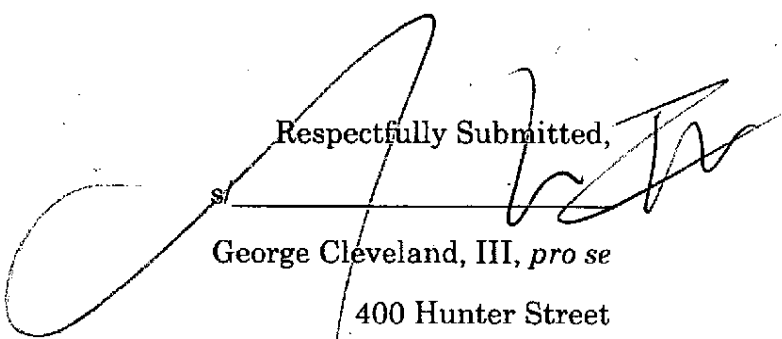
The specific controversy is that the Circuit Court Reporter Lisa M. Scott failed to amend her Certificate of Reporter certifying that the changes she made are true and accurate under section P of the S.C. Court Reporter Manual after she corrected the name of the Probation Agent that was present at the hearing from "Probation Officer" to "L. Travis Holcombe, Probation Officer". Exhibits 3-5.

The original Certificate of Reporter dated May 29, 2018 is the same language as the June 11, 2018 Certificate of Reporter; accordingly, I'm respectfully requesting that this Court Grant this instant Motion to Stay the filing of my Initial Brief, and the designation of matters to be included on Appeal

R.p. 36

until after Circuit Court Judge McIntosh has reviewed the attached Motion to review the transcript, and the authorities under the SCRAP, and the S.C. Court Reporter Manual. *IBID.*

Respectfully Submitted,



George Cleveland, III, *pro se*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: July 31, 2018

R.p. 37₁

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
 George Cleveland, III)
)
 Defendant.)

Transcript of Record
2012-GS-23-07504
2012-GS-23-07505
2012-GS-23-07507

February 23, 2018
Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge.

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

L. Travis Holcombe, Probation Agent,
George Cleveland, Pro Se Defendant

Lisa Scott
Circuit Court Reporter

Rep. 38 2

I N D E X

WITNESS

PAGE

No Witnesses.

Ref. 39

3

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Court's - Paperwork		X

Rip 40

4

P R O C E E D I N G S

* * * * *

1
2
3 MS. ALEWINE: George Cleveland. He's an add
4 on. George Cleveland.

5 THE DEFENDANT: (Approached.)

6 MR. HOLCOMBE: This case is actually out of
7 Oconee County, Your Honor.

8 THE COURT: Okay.

9 THE CLERK: Please raise your right hand.

10 THE DEFENDANT: (Complying.)

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you give the Court is the truth, the whole
13 truth, and nothing but the truth?

14 THE DEFENDANT: Yes, ma'am.

15 THE CLERK: Thank you.

16 THE COURT: When was Mr. Cleveland served?

17 MR. HOLCOMBE: Your Honor, he was served by the
18 citation on October the 12th, 2017.

19 THE COURT: October?

20 MR. HOLCOMBE: Yes, sir.

21 THE COURT: Mr. Cleveland, do you intend to
22 represent yourself today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, sir. Has he been sworn?

25 THE CLERK: Yes, sir, Your Honor.

R.p. 41 5

1 THE COURT: Mr. Cleveland, have you read or had
2 read to you the report of your probation violation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you agree or disagree that you
5 willfully violated the terms of your probation?

6 THE DEFENDANT: I disagree.

7 THE COURT: Tell me why.

8 THE DEFENDANT: The -- the bottom of alleged
9 citation deals with restitution, and it's not
10 willfully violated that is.

11 THE COURT: Well, let me ask you this,
12 Mr. Cleveland. You seem like you're educated.
13 You're well-dressed and well-spoken. What kind of
14 work do you do?

15 THE DEFENDANT: I'm a taxicab driver.

16 THE COURT: A taxicab driver?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How much money do you earn?

19 THE DEFENDANT: I average about \$350 a week.

20 And can I go back to before ---

21 THE COURT: No, sir. I get to ask the
22 questions, and I'll let you speak in just a minute.
23 I get to ask the questions right now.

24 So the question I want to know is this, if you
25 were sentenced in 2013 by Judge Miller?

R.p. 42⁶

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And in five years, you paid a total
3 of \$150 towards your restitution according to my
4 report here; is that correct, Officer?

5 MR. HOLCOMBE: He's actually -- he paid a
6 little bit a couple of months ago. Two hundred
7 fifty as of today. Two hundred fifty he's total.

8 THE COURT: \$250. Explain why you could only
9 come up with \$250 since your sentence in May of
10 2013.

11 THE DEFENDANT: Well, if I can correct the
12 record, it was Judge -- let me see, it was Judge
13 Couch who sentenced me over in Oconee County and
14 also Judge Miller from Greenville County, so it's
15 actually two separate cases they all ran concurrent.

16 THE COURT: I don't have both of them. This is
17 1/11/06?

18 MR. HOLCOMBE: It's just 1/11/06. They ---

19 THE COURT: When did Judge Couch sentence him?

20 MR. HOLCOMBE: Hold on. I've got it here. It
21 was Judge ---

22 THE COURT: Actually, it was Miller.

23 MR. HOLCOMBE: Yeah, Judge Miller. I'm showing
24 Judge Miller on both of them -- on all of them -- on
25 both the -- both the sentences.

Rp. 43

7

1 THE COURT: Anyway, the end date is ---

2 MR. HOLCOMBE: The end date is ---

3 THE COURT: --- 2/22.

4 PROBATIONS OFFICER: Yes, sir. That is
5 correct.

6 THE COURT: All right. Well, go back and
7 explain -- explain something to me, Mr. Cleveland.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Again, my question is, how come
10 you've only paid -- or why have you only paid \$250
11 since 2013?

12 THE DEFENDANT: The reason is because I'm
13 still -- my cases are still active.

14 THE COURT: That's not a reason. That's why
15 you pay.

16 THE DEFENDANT: My -- my cases are still
17 pending. They're on appeal. My post-conviction
18 relief from Greenville County and Oconee County.

19 And I have other cases that when I was in
20 prison, I was actually -- they were actually active
21 as well.

22 So it's -- it's -- it's really hard to pay
23 restitution and continue to fight your case as well.
24 So that's the reason why I wanted to state -- tell
25 you that before I got my income, because I have a

R.P. 44

8

1 breakdown of my income and my bills and things like
2 that.

3 THE COURT: Let me see it.

4 THE DEFENDANT: Ugh...

5 THE COURT: Have you ever tried to meet with
6 the officer to come up with a payment plan?

7 THE DEFENDANT: We -- we have ---

8 THE COURT: Answer the question, please, sir.
9 Have you tried to meet with your officer -- your
10 agent to try to come up with a payment plan?

11 THE DEFENDANT: We did. It wasn't a discussion
12 because they knew that what -- the amount of cases I
13 had, so it was -- it was -- it was irrelevant, I
14 mean, because...

15 MR. HOLCOMBE: Your Honor, when the citation
16 was served, I was actually working in Oconee County
17 and told him it was a money citation.

18 He advised because of the appeals that the
19 Court had no jurisdiction to make him pay
20 restitution. That's why he wasn't paying it.

21 And I said, "Well, you -- you need to advise
22 the Court that, but even while they're on appeal,
23 you're still on probation," but he stated -- and he
24 refused to sign the conditions when he first got
25 out. He felt that the Court had no jurisdiction

R.p. 45

9

1 over him as far as making him pay restitution.

2 THE COURT: Do you disagree with that?

3 THE DEFENDANT: I disagree with that. The
4 reason I -- the reason I refused to sign the
5 conditions of probation at that time is because I
6 was about to get released from prison in Tiger River
7 Correctional Institution.

8 And they wanted me to sign that before I
9 reported. And I said, "I'm not going to sign that.
10 I'm refusing to sign that till I actually report."

11 So when I -- so when I got out, I maxed out
12 March 31, 2007 -- 17, I reported that Monday,
13 because that was a condition. So when I reported
14 that Monday, I signed the conditions that I
15 understood.

16 MR. HOLCOMBE: He advised me on the date that
17 citation was served that the Court did not have
18 jurisdiction to make him pay the restitution because
19 he was appealing it.

20 THE COURT: Anything further, Mr. Cleveland?

21 THE DEFENDANT: Yes, sir. I have -- I have
22 documentation of the cases I have. I want it
23 entered into the record.

24 THE COURT: Yes, sir.

25 THE DEFENDANT: But so before I do that, I just

R.P. 46

10

1 wanted to briefly explain the situation.

2 What I'm alleging in my post-conviction relief,
3 of course Judge Couch ---

4 THE COURT: Well, this is not a PCR hearing.
5 This is a probation revocation hearing.

6 THE DEFENDANT: Right.

7 THE COURT: It's not relevant to this hearing.

8 THE DEFENDANT: Sir, I -- sir, I respectfully
9 disagree because the statute that -- that gives you
10 jurisdiction to hear this case over the rest -- over
11 the restitution specifically says I can actually
12 make arguments on why I can't pay and submit
13 evidence, so that's why I'm trying to explain to
14 you.

15 THE COURT: I'm not going to hear anything on
16 the PCR. Anything you want to say as to why you're
17 not paying, I'll be glad to hear. That's what I've
18 been trying find out from the beginning of this
19 hearing, so tell me about that.

20 THE DEFENDANT: Judge, the reason I cannot pay
21 the restitution is because I'm continuously fighting
22 my case, my post-conviction relief case in
23 Greenville County and Oconee County.

24 One of them is in Federal Court right now.
25 Both of them -- both of them were submitted -- were

R.p. 47

11

1 submitted to the South Carolina Supreme Court, and
2 they wouldn't put them on the docket. They were
3 forged.

4 And my Oconee County PCR, Judge Sprouse denied
5 it and ordered the State to type up an order of
6 dismissal, which is illegal because the statute --
7 the PCR statute says the judge must make specific
8 findings of fact and conclusion of laws.

9 So that's all in these documents, so that's the
10 reason I can't pay.

11 THE COURT: Okay. Would you make those
12 exhibits for the Court, please, sir, for review?

13 THE DEFENDANT: And just for the record, it's
14 401 pages of PCR activity in Oconee County and
15 Greenville County, the Circuit Court, and also the
16 Supreme Court.

17 There's also some Federal documents -- Federal
18 documents in there from my Federal habeas corpus on
19 my Greenville County case.

20 THE COURT: Okay, sir.

21 THE DEFENDANT: Do you want me to take these
22 off?

23 THE COURT: It's your case. Do whatever you
24 need to do.

25 (Court's Exhibit No. 1 was marked and received

R.p. 48

12

1 into evidence.)

2 THE DEFENDANT: And another thing just for the
3 record, Judge, I draw taxes and I make -- I make
4 about \$350 a week.

5 Electric bill is \$100 a month. My car
6 insurance is 110. Dental insurance and short-term
7 disability and hos -- hospital department insurance
8 totals 130. My groceries is about 400. My gas is
9 about 400. And my legal fees -- the copies, ink,
10 papers, postage, envelopes -- average about \$300 a
11 month.

12 THE COURT: Who is your attorney?

13 THE DEFENDANT: Me.

14 THE COURT: So you're charging yourself legal
15 fees?

16 THE DEFENDANT: I'm not charging myself.
17 That's the reason why I put in parentheses, copies,
18 ink, paper, postage and envelopes. It's very, very
19 expensive to fight your own case.

20 The 401 documents I just submitted was \$53 --
21 \$56 at the UPS when I sent these things. And he --
22 he -- they discounted \$53.

23 So the -- and I didn't put in there the extra
24 time it takes me to drive to Greenville County
25 Public Library because that's the closest library

R.P. 49

13

1 that's public that I can do legal research on, on
2 the Westlaw database.

3 So as you can see, I know it's a lot of
4 documents, but everything there is timely filed.
5 It's nonfrivolous. It alleged a lot of prosecutor
6 misconduct from the -- from the Solicitor's office
7 in Greenville and Oconee County with indictments
8 that total in the hundreds of eight hours.

9 Ex parte communications with Greenville County
10 with Judge Hall and the -- Karen Ratigan who's the
11 deputy -- who was the former Deputy Assistant
12 Attorney General for South Carolina.

13 And it's just very detailed. This is a lot of
14 the hard work, and I'm actually in college as well.
15 So, my -- you know, it's -- my time is just, you
16 know, very limited to do anything extra.

17 A lot of folks give up. I do not. I haven't
18 found a lawyer that I can trust that actually takes
19 the time to research my case. Plead guilty. Plead
20 guilty. Plead guilty. Blah, blah, blah. I'm not
21 doing that because ---

22 THE COURT: Well, let me ask you a question
23 under what I'm looking at. I can't tell, but it
24 appears that you pled guilty in front of Judge
25 Miller, or did you go to trial?

R.p. 50

14

1 THE DEFENDANT: I pled guilty with Judge
2 Miller, 2013. I also pled guilty with Judge Couch
3 in Oconee County.

4 THE COURT: And the question I have, you pled
5 guilty to possession of stolen bag of more than
6 \$10,000, correct?

7 THE DEFENDANT: Correct.

8 THE COURT: And you were ordered to pay
9 \$13,410.00 in restitution, correct?

10 THE DEFENDANT: On the Greenville County
11 charges, that's correct.

12 THE COURT: And that's on the stolen vehicle.
13 That's Judge Miller's case?

14 THE DEFENDANT: That's Judge Miller. Yes.

15 THE COURT: And you agreed to do that?

16 THE DEFENDANT: I agreed to do that at the
17 time.

18 THE COURT: Okay. All right.

19 THE DEFENDANT: Now, when I filed my
20 post-conviction relief, I alleged ineffective
21 assistance of counsel and depri -- deprivation of
22 subject matter of jurisdiction, because the vehicles
23 in question were stolen from Georgia.

24 I bought them in South Carolina across state
25 lines, so it's a Federal jurisdiction of the Dyer

Rp-51

15

1 Act, so that's -- that's -- that's one of my biggest
2 arguments. So I'm fighting it Federally, even
3 though I pled guilty.

4 You know, I alleged that I involuntarily pled
5 guilty and unintelligibly pled guilty because of the
6 massive amount of fraud in this case, and that's why
7 I can't pay my restitution.

8 THE COURT: All right. Thank you. Is there
9 anything further?

10 MR. HOLCOMBE: No, sir, Your Honor.

11 THE COURT: I find that Mr. Cleveland has
12 willfully violated the terms of his probation and
13 that he was willfully not paid the restitution since
14 he pled, roughly five years and paying about
15 \$250 ---

16 MR. HOLCOMBE: Yes, sir.

17 THE COURT: --- out of 13,410.

18 I find it credible the agent's statement that
19 he doesn't have jurisdiction -- the Court doesn't
20 have jurisdiction to make him pay the restitution.
21 I think that I do. I think that you willfully not
22 paid. I'm going to give you the chance to come back
23 and. I'll give you 90 days from today.

24 I'm tolling him while he's in. And hopefully
25 when you get out, you'll come back and start as best

R.p. 52 16

1 you can paying the restitution. That doesn't change
2 you from having to pay the PCR, but you need to pay
3 this. Good luck to you.

4 THE DEFENDANT: Actually -- actually, it will
5 hurt me, sir. If I'm incarcerated, it will.

6 THE COURT: Well, you're incarcerated as of
7 right now. Have a good day, sir.

8 THE DEFENDANT: Can you make a finding on the
9 actual evidence that I submitted?

10 THE COURT: I'm going to find it on the
11 testimony I heard, and I don't think the other
12 evidence -- other evidence is relevant.

13 THE DEFENDANT: Even though I'm fighting my
14 case?

15 THE COURT: Yes, sir. I do not.

16 MR. HOLCOMBE: Thank you, Your Honor.

17 (The proceedings concluded at 12:09 p.m.)

18 * * * * *

19

20

21

22

23

24

25



Rp. 54

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

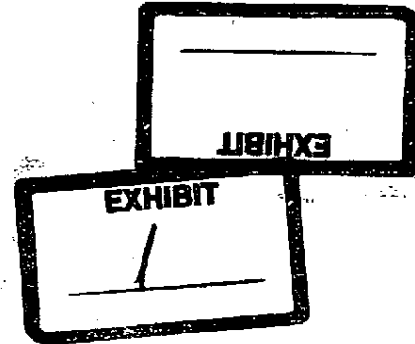
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 06, 2018

George Cleveland, III
400 Hunter Street
Seneca SC 29678

Re: The State v. George Cleveland, III
Appellate Case No. 2018-000564



Dear Mr. Cleveland:

The Court received your letter to Desiree Allen regarding the transcript. Based on your assertion that you received the transcript on June 23, 2018, our records reflect your initial brief of appellant and designation of matter are due July 23, 2018. If you wish to request further relief, you must file a motion pursuant to Rule 240, SCACR.

Very truly yours,

CLERK

cc: Matthew C. Buchanan, Esquire

FILED: July 17, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

R.p. 55

No. 18-6691
(8:17-cv-02922-RBH)

GEORGE CLEVELAND, III

Petitioner - Appellant



v.

STATE OF SOUTH CAROLINA

Defendant - Appellee

O R D E R

Upon consideration of the motion for extension of the informal briefing schedule, the court extends the time for serving and filing the informal opening brief to 07/27/2018. Any further request for an extension of time in which to file the informal opening brief shall be disfavored.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk



Rp:56

reporter will then review the record and report the findings in writing to the challenger, with a copy to all parties and Court Administration. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost. Copies of correspondence relating to a challenge to a transcript's accuracy must be provided to Court Administration in accordance with Rules 207 and 607, SCACR. Further review of the record may be permitted by the presiding judge upon written request with good cause shown. If no challenge is received by the court reporter within the one-year period the tapes may be reused or destroyed. (Rule 607(i), SCACR) (See Appendix 4).

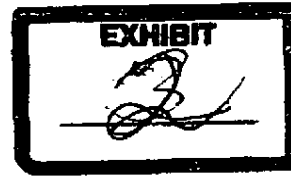
If a transcript is requested by an individual who is not a party to the case, primary and back-up tapes should not be destroyed or reused after the transcript is prepared until the required time periods are satisfied. This requirement is necessary because the transcript produced for a non-party may not otherwise be available if an appeal is taken.

In a death penalty case where the defendant is sentenced to death, a transcript is generally requested. Court reporters must notify Court Administration as soon as a death penalty transcript is requested.

XIV. TRANSCRIPTS

A. Requests for Production of Transcripts

All transcript requests must be submitted in writing or via email to the court reporter and state with specificity the portion of the transcript desired and whether a particular format (.rtf, pdf., txt.) is requested in addition to the hard copy original transcript. The written request must include the case caption, case number, date(s) of proceeding, county and judge. A court reporter should provide attorneys and



Rp. 57

2. Exhibit list reflecting those marked for i.d. and entered in evidence;
3. Digital files with instructions for use;
4. Court reporter trial log and other helpful information;
5. Court reporter contact information in case there are questions.

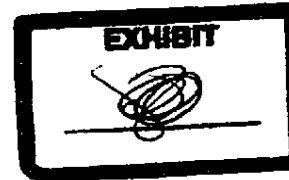
B. Requests to Listen to Audio Recordings/Read Steno Notes

Court reporters **shall not** grant any request to listen to audio recordings or to read steno notes unless the requestor has received written authorization from the presiding judge or, in his/her absence, the chief judge for administrative purposes in that circuit.

C. Retention of Primary and Back-up Tapes

Rule 607(i), SCACR governs the retention of tapes. It provides that a court reporter shall retain the primary and back-up tapes of a proceeding that has not been transcribed for a period of at least five years after the date of the proceeding. Only after the expiration of that period may the court reporter reuse or destroy the tapes. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial.

In any proceeding which has been transcribed, the court reporter shall retain the primary and back-up tapes which have been transcribed for a period of at least one year after the original transcript is sent to the requesting party to allow any party to challenge the accuracy of the transcription. When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court



Rp 58

P. Certificate of Court Reporter

A statement must be made by the court reporter certifying the accuracy of the transcript. The certificate must be signed by the reporter; it does not need to be notarized. The completion date of the transcript must be included in the certificate. (See Appendix 3, Exhibit 15).

XV. REQUIRED REPORTS

The court reporter shall furnish information requested in the Court Reporter Transcript Tracking System supplied online by Court Administration. Accurately recording time worked is the responsibility of every court reporter. Altering, falsifying, tampering with time records, or recording or tampering with another employee's time record, may result in disciplinary action, up to and including termination of employment or a finding of contempt. It is the court reporter's responsibility to sign time and work records.

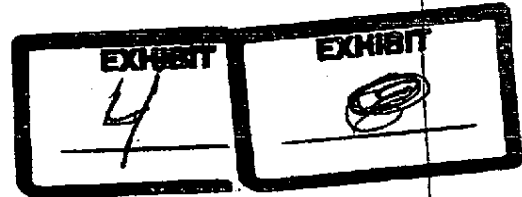
A court reporter's signature on any required report constitutes a certificate by him/her that the information entered online into the Court Reporter Transcript Tracking System on all reports, including all time and work recorded therein, is true and accurate to the best of the court reporter's knowledge.

A. "Hours Worked" Recorded on Weekly Time Sheets (Monthly Report)

Rp. 59 1

State of South Carolina
County of Anderson

Court of General Sessions



State of South Carolina

v.

George Cleveland, III

Defendant.

Transcript of Record
2012-GS-23-07504
2012-GS-23-07505
2012-GS-23-07507

February 23, 2018
Anderson, South Carolina

BEFORE:

The Honorable Lawton McIntosh, Judge.

APPEARANCES:

Probation Officer

George Cleveland, Pro Se Defendant

Lisa Scott
Circuit Court Reporter

Rp. 60

1

State of South Carolina
County of Anderson

Court of General Sessions



State of South Carolina)
)
)
 v.)
)
 George Cleveland, III)
)
 Defendant.)

Transcript of Record
2012-GS-23-07504
2012-GS-23-07505
2012-GS-23-07507

February 23, 2018
Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge.

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

L. Travis Holcombe, Probation Agent
George Cleveland, Pro Se Defendant

Lisa Scott
Circuit Court Reporter

R.P. 61

STATE OF SOUTH CAROLINA
 IN THE COURT OF GENERAL SESSIONS

State of South Carolina,) FOR THE TENTH JUDICIAL CIRCUIT
 Plaintiff,)
 v.) Warrant No, 2012-GS-23-07504
 George Cleveland, III,) Defendant's Motion to Challenge Transcript
 Defendant.)
 _____)



1. **To: Circuit Court Judge R. Lawton McIntosh:** George Cleveland, III, the *pro se* Defendant in the above captioned case, respectfully request that this Court simply order Circuit Court Reporter Lisa M. Scott who transcribed the February 23, 2018 proceedings where you presided at the Anderson County General Sessions Court to amend the Certificate of Reporter to add that she spoke *ex parte* to the Anderson County Probation Office "I was able to check with the probation office today and it was actually L. Travis Holcombe that was in attendance on the date in question. I have made that correction and will be forwarding you the transcript shortly." See Exhibit-1 (June 11, 2018 email from Ms. Scott). On June 15, 2018, Ms. Scott declined to certify that Mr. Holcombe was in fact the Probation Official present at the February 23, 2018 hearing, see Exhibit-2 . Since Ms. Scott still refused to certify that the Transcript proceedings are true and correct "[a]ny inaccuracies will be corrected and the pages forwarded to the challenger at no cost under XIII. CUSTODY AND CONTROL OF THE RECORD (C) . Since there is still a controversy remaining, this Court has Jurisdiction pursuant to XIII. CUSTODY AND CONTROL OF THE RECORD (C) of the S.C. Court Reporter Manual.

R.p. 62

"Further review of the record may be permitted by the presiding judge upon written request with good cause shown." See Exhibits 3-4 (copy of pages 19-20 of the S.C. Court Reporter Manual).



2. The S.C. Court Reporter Manual states in section P. Certificate of Court Reporter A statement must be made by the court reporter certifying the accuracy of the transcript. The certificate must be signed by the reporter; it does not need to be notarized. The completion date of the transcript must be included in the certificate.

3. On May 29, 2018, Ms. Scott "certif [ied] that the foregoing is a true, accurate, and complete transcript of record of all the proceedings... on the 23rd day of February, 2018. See Exhibit-5. In her June 11, 2018 email to me confirming that she made changes to the February 23, 2018 transcript pursuant to my transcript challenge that no name was on the title page for the Probation Official that represented the SCDPPPS at that hearing, but she put "Probation Officer", see Exhibit-6, but she did not add a single word to the Certificate of Reporter dated June 11, 2018 (corrected transcript), see Exhibit-7 to expressly state that she spoke with the Anderson County Probation Office and "was able to check with the probation office today and it was actually L. Travis Holcombe that was in attendance on the date in question. I have made that correction and will be forwarding you the transcript shortly." See Exhibit-1. She expressed the language in the June 11, 2018 email is not enough to certify that the transcript is a true, accurate, and complete transcript of speaking with Mr. Holcombe himself or another staff member of the Anderson County Probation Office, but the S.C. Court Reporter Manual requires Ms. Scott in

R.P. 63

section P. Certificate of Court Reporter. "A statement must be made by the court reporter certifying the accuracy of the transcript", see exhibit-8 (page 35 of the Court Reporter Manual); consequently, the correct June 11, 2018 transcript made by Circuit Court Reporter Lisa M. Scott is not "true, accurate, and complete" under section P "Certificate of Court Reporter". *IBID.*



Relief Requested:

4. **WHEREFORE:** Grant this instant Motion, and order South Carolina Circuit Court Reporter Lisa M. Scott to add language to her *Certificate of Reporter* dated June 11, 2018 that she spoke with the Anderson County Probation Office today (June 11, 2018) *ex parte* and it was actually L. Travis Holcombe that was in attendance on February 23, 2018 at the General Sessions hearing held at the Anderson County Courthouse. Or similar language that is sufficient to make clear how Ms. Scott knew L. Travis Holcombe was the Probation Agent present that the February 23, 2018 hearing at the Anderson County General Sessions Court.

Respectfully Submitted

sl

George Cleveland, III, *pro se*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

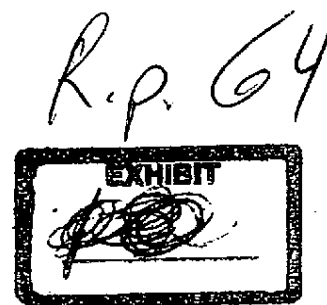
Email: gcleveland7475@gmail.com

Dated: July 26, 2018

1/2018

Grand - Challenge of transcript

16051K



Scott, Lisa M. <lscott@sccourts.org>
x: George Cleveland III <gcleveland7475@gmail.com>
c: "Allen, Desiree" <DAllen@sccourts.org>

Mon, Jun 11, 2018 at 3:13 PM

Mr. Cleveland,

I didn't feel comfortable using Mr. Simmons' name since I wasn't able to speak to him myself. I was able to check with the probation office today, and it was actually L. Travis Holcombe that was in attendance on the date in question. I have made that correction and will be forwarding you the transcript shortly.

Thank you,

Lisa Scott
Circuit Court Reporter
Thirteenth Judicial Circuit

From: George Cleveland III <gcleveland7475@gmail.com>
Sent: Sunday, June 10, 2018 4:46 PM
To: Scott, Lisa M.
Cc: Allen, Desiree
Subject: Re: Challenge of transcript

Ms. Scott,

Thanks for the follow up, and I look forward to receiving a copy of the changes in the transcript. I have attached a copy of a letter from the SCDPPPS office of General Counsel where I asked for under the South Carolina Freedom of Information Act (FOIA) the name of the Hearing Officer for the Oconee Probation Office. Mr. Mark Simmons is his name. He was the official representing the Probation Office of Oconee at this hearing. It would had been more easier if Mr. Simmons would have stated prior to the hearing, stated his name for the Record.

Best Regards,

George Cleveland, III, pro se
100 Hunter Street
Aeneca, S.C. 29678

[Note: text hidden]

George Cleveland III <gcleveland7475@gmail.com>
"Scott, Lisa M." <lscott@sccourts.org>

Fri, Jun 15, 2018 at 1:40 AM

Dear Ms. Scott,

I understand your concern about making sure the transcript is accurate. I also have concerns about the name of the Probation Official that was at the hearing. You stated the Probation Office told you his name was L. Travis Holcombe, I stated his name was Mark Simmons. They must look alike. To settle this issue, I will feel more comfortable if you contacted the Probation Office in I assume, Anderson County, and get verification in writing that Mr. Holcombe was

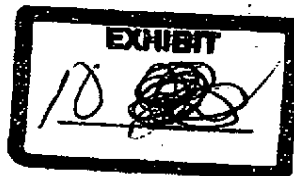
/2018

Gmail - Challenge of transcript

indeed the Probation Official at my hearing because he did not say his name on the record, you, nor Judge McIntosh did not request that he say his name for the record; therefore, I have no proof of the name of the specific Probation Staff member who told you it was Mr. Holcombe; accordingly, can you please request that the Anderson County Probation Office on their letter-head expressly state Mr. L. Travis Holcombe was the Probation Official at my hearing on March 09, 2018 at the Anderson County Courthouse; Judge McIntosh presiding?

Very Best Regards,

George Cleveland, III
400 Hunter Street
Seneca, S.C. 29678
Cell no. 864-784-7223
(Contacted text: hidden)



R.P. 65

Fri, Jun 15, 2018 at 9:23 AM

Scott, Lisa M. <lscott@sccourts.org>
cc: George Cleveland III <gcleveland7475@gmail.com>

Mr. ?Cleveland.

I spoke with Mr. Holcombe directly and he assured me it was him, so the transcript is accurate. You should receive your copy shortly, and that will conclude any further business we have.

Thank you.

Lisa Scott
Circuit Court Reporter
Thirteenth Judicial Circuit

From: George Cleveland III <gcleveland7475@gmail.com>
Sent: Friday, June 15, 2018 1:40 AM
To: Scott, Lisa M.
Subject: Re: Challenge of transcript

Dear Ms. Scott,

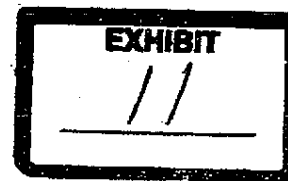
I understand your concern about making sure the transcript is accurate. I also have concerns about the name of the Probation Official that was at the hearing. You stated the Probation Office told you his name was L. Travis Holcombe, I stated his name was Mark Simmons. They must look alike. To settle this issue, I will feel more comfortable if you contacted the Probation Office in I assume, Anderson County, and get verification in writing that Mr. Holcombe was indeed the Probation Official at my hearing because he did not say his name on the record, you, nor Judge McIntosh did not request that he say his name for the record; therefore, I have no proof of the name of the specific Probation Staff member who told you it was Mr. Holcombe; accordingly, can you please request that the Anderson County Probation Office on their letter-head expressly state Mr. L. Travis Holcombe was the Probation Official at my hearing on March 09, 2018 at the Anderson County Courthouse; Judge McIntosh presiding?

Very Best Regards,

George Cleveland, III
400 Hunter Street
Seneca, S.C. 29678
Cell no. 864-784-7223

On Mon, Jun 11, 2018 at 3:13 PM Scott, Lisa M. <lscott@sccourts.org <mailto:lscott@sccourts.org>> wrote:
Mr. Cleveland.

I didn't feel comfortable using Mr. Simmons' name since I wasn't able to speak to him myself. I was able to check with the probation office today, and it was actually L. Travis Holcombe that was in attendance on the date in question. I have made that correction and will be forwarding you the transcript shortly.



2. Exhibit list reflecting those marked for i.d. and entered in evidence;
3. Digital files with instructions for use;
4. Court reporter trial log and other helpful information;
5. Court reporter contact information in case there are questions.

R.P. 66

B. Requests to Listen to Audio Recordings/Read Steno Notes

Court reporters **shall not** grant any request to listen to audio recordings or to read steno notes unless the requestor has received written authorization from the presiding judge or, in his/her absence, the chief judge for administrative purposes in that circuit.

C. Retention of Primary and Back-up Tapes

Rule 607(i), SCACR governs the retention of tapes. It provides that a court reporter shall retain the primary and back-up tapes of a proceeding that has not been transcribed for a period of at least five years after the date of the proceeding. Only after the expiration of that period may the court reporter reuse or destroy the tapes. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial.

In any proceeding which has been transcribed, the court reporter shall retain the primary and back-up tapes which have been transcribed for a period of at least one year after the original transcript is sent to the requesting party to allow any party to challenge the accuracy of the transcription. When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court



reporter will then review the record and report the findings in writing to the challenger, with a copy to all parties and Court Administration. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost. Copies of correspondence relating to a challenge to a transcript's accuracy must be provided to Court Administration in accordance with Rules 207 and 607, SCACR. Further review of the record may be permitted by the presiding judge upon written request with good cause shown. If no challenge is received by the court reporter within the one-year period the tapes may be reused or destroyed. (Rule 607(i), SCACR) (See Appendix 4).

If a transcript is requested by an individual who is not a party to the case, primary and back-up tapes should not be destroyed or reused after the transcript is prepared until the required time periods are satisfied. This requirement is necessary because the transcript produced for a non-party may not otherwise be available if an appeal is taken.

In a death penalty case where the defendant is sentenced to death, a transcript is generally requested. Court reporters must notify Court Administration as soon as a death penalty transcript is requested.

XIV. TRANSCRIPTS

A. Requests for Production of Transcripts

All transcript requests must be submitted in writing or via email to the court reporter and state with specificity the portion of the transcript desired and whether a particular format (.rtf, .pdf., .txt.) is requested in addition to the hard copy original transcript. The written request must include the case caption, case number, date(s) of proceeding, county and judge. A court reporter should provide attorneys and

17
RP.68

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON



I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 23rd day of February, 2018.

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

May 29, 2018

/s/Lisa Scott

Lisa Scott

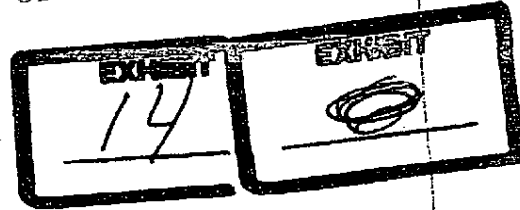
Lisa Scott
Circuit Court Reporter

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

R.P. 69

State of South Carolina
County of Anderson

Court of General Sessions



State of South Carolina

v.

George Cleveland, III

Defendant.

Transcript of Record
2012-GS-23-07504
2012-GS-23-07505
2012-GS-23-07507

February 23, 2018
Anderson, South Carolina

BEFORE:

The Honorable Lawton McIntosh, Judge.

APPEARANCES:

Probation Officer

George Cleveland, Pro Se Defendant

Lisa Scott
Circuit Court Reporter

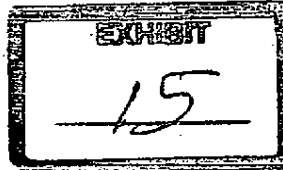
R.P. 69

Rp 70 17

CERTIFICATE OF REPORTER

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

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON



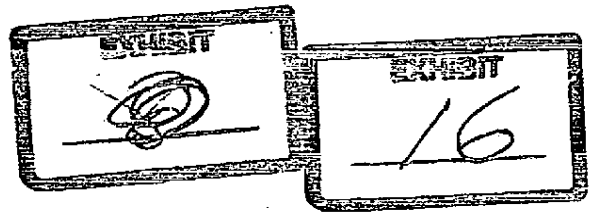
I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 23rd day of February, 2018.

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

June 11, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter



P. Certificate of Court Reporter

A statement must be made by the court reporter certifying the accuracy of the transcript. The certificate must be signed by the reporter; it does not need to be notarized. The completion date of the transcript must be included in the certificate. (See Appendix 3, Exhibit 15).

R.p. 71

XV. REQUIRED REPORTS

The court reporter shall furnish information requested in the Court Reporter Transcript Tracking System supplied online by Court Administration. Accurately recording time worked is the responsibility of every court reporter. Altering, falsifying, tampering with time records, or recording or tampering with another employee's time record, may result in disciplinary action, up to and including termination of employment or a finding of contempt. It is the court reporter's responsibility to sign time and work records.

A court reporter's signature on any required report constitutes a certificate by him/her that the information entered online into the Court Reporter Transcript Tracking System on all reports, including all time and work recorded therein, is true and accurate to the best of the court reporter's knowledge.

A. "Hours Worked" Recorded on Weekly Time Sheets (Monthly Report)

R.P. 72

STATE OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS

State of South Carolina,) FOR THE TENTH JUDICIAL CIRCUIT
Plaintiff,)
v.) Warrant No, 2012-GS-23-07504
George Cleveland, III,) Defendant's Certificate of Service
Defendant.)
_____)



I, George Cleveland, III, the *pro se* Defendant in the above captioned case, on the date below, served by first class mail, postage prepaid, and the envelope properly addressed, the Defendant's Motion to Challenge Transcript to the following parties, and their respective last know mailing addresses:

Lisa M. Scott, Circuit Court Reporter

Post Office Box 4356

Anderson, S.C. 29622

Desiree Allen, Court Reporter Manager of the S.C. Court Administration

1220 Senate Street, Suite 200

Columbia, S.C. 29201

Matthew Buchanan, General Counsel for the SCDPPPS

Post Office Box 50666

Columbia, S.C. 29250

Rip 73



Respectfully Submitted,

[Handwritten signature]
s/ _____

George Cleveland, III, *pro se*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email:gcleveland7475@gmail.com

Dated: July 31, 2018

Form 16.6
Form Approved by
SC Attorney General
May 1988

Financial PROBATION CITATION

Exhibit - 4

Indictment Number: 12-GS-23-07504, 12-GS-23-07507

Citation #: C-37-17-0059

RECEIVED
MAR 30 2018
SC Court of Appeals

SOUTH CAROLINA v. GEORGE CLEVELAND III	<i>R.P. 75</i>	COUNTY: <u>OCONEE</u>
		SID # <u>01068002</u>
		SCDC #

TO: GEORGE CLEVELAND III

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

Place	Room
	Date and Time:

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

Violations Charged
 The above named defendant has failed to comply with the Court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees.

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.

WALHALLA, South Carolina	Probation and Parole Agent - Agent # <i>Ginger W. Newton - 0343</i>
Date <u>10/05/2017</u>	<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 <u>Oconee</u>	Date and Time <u>10-12-17 2:47pm</u>
	Serving Officer's Signature <i>[Signature]</i>

Sworn to and subscribed before me this 12 day of OCT, 17

Signature of Notary Public <i>[Signature]</i>	My Commission Expires <u>4/24/2025</u>
--	---

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of OCONEE

Exhibit - 5
Rp. 76

Personally appeared before me, Newton, Ginger W. Ginger W. Newton, who first being duly sworn, deposes and says that GEORGE CLEVELAND III did within this county and State on the 5 day of October, 2017, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

The above named defendant has failed to comply with the Court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees.

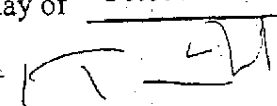
The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

The above named defendant agreed in writing, as a part of his/her probation agreement, to pay a fine, restitution and supervision fees. The defendant has not complied with his/her written agreement. As of the date of this affidavit, the defendant's arrearage and unpaid balance on the agreed payment schedule is as follows:

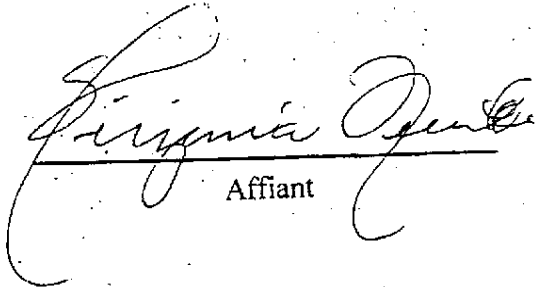
	<i>Fine</i>	<i>Restitution</i>	<i>Supervision Fees</i>	<i>DNA Fees</i>
Arrearage	\$60.00	\$1,560.00	\$300.00	\$0.00
Unpaid Balance	\$267.80	\$13,410.00	\$3,000.00	\$0.00

The matter needs to be reviewed by the court pursuant to Section 24-21-430. The defendant should be required to show the Court why he/she has not kept his/her probation agreement to pay. The Court should determine whether or not the defendant has willfully violated the condition to pay fines, and/or restitution and whether or not the condition to pay fines, restitution should be modified.

Sworn to and subscribed before me this
5 day of October, 2017


Signature of Notary Public

4-24-2025
My Commission Expires:


Affiant

3/9/2018

Article I, South Carolina Constitution - Ballotpedia

Section 19

Text of Section 19: Imprisonment for Debt

No person shall be imprisoned for debt except in cases of fraud.

(1970 (56) 2684; 1971 (57) 315.)

Exhibit - 1

Rp. 77

Section 20

Text of Section 20: Right to Keep and Bear Arms; Armies; Military Power Subordinate to Civil Authority; How Soldiers Quartered

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law.

(1970 (56) 2684; 1971 (57) 315.)

Section 21

Text of Section 21: Martial Law

No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the armed forces of the United States, and except the militia in actual service, but by the authority of the General Assembly.

(1970 (56) 2684; 1971 (57) 315.)

Section 22



R.P. 78

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 02, 2018

Mr. Matthew C. Buchanan, Esquire
2221 Devine Street
PO Box 50666
Columbia SC 29250

Re: The State v. George Cleveland, III
Appellate Case No. 2018-000564

Dear Counsel:

Please provide a return to the appellant's motion to stay no later than 12pm on Wednesday, April 4, 2018.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: George Cleveland, III



Duvall Ford Company Inc

US HIGHWAY 441 SOUTH, CLAYTON, GA 30525

SALES: 877-796-2751

SERVICE: 877-843-5518

PARTS: 877-893-7058

Rip 79

About

Welcome to our new website!!

We have a strong and committed sales staff with many years of experience satisfying our customers' needs. Feel free to browse our inventory online, request more information about vehicles, set up a test drive or inquire about financing!

If you don't see what you are looking for, click on CarFinder, fill out the form, and we will let you know when vehicles arrive that match your search! Or if you would rather discuss your options with our friendly sales staff, click on Directions for interactive driving directions and other contact information. We look forward to serving you!

Contact Info

Duvall Ford Company Inc

US Highway 441 South
Clayton, GA 30525

Sales: 877-796-2751

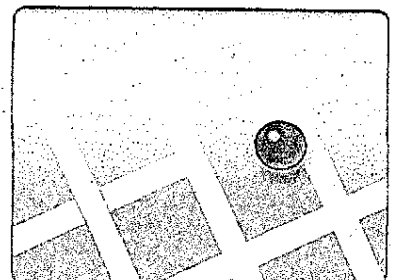
Service: 877-843-5518

Parts: 877-893-7058

Showroom Hours

Monday	7:00AM - 7:00PM
Tuesday	7:00AM - 7:00PM
Wednesday	7:00AM - 7:00PM
Thursday	7:00AM - 7:00PM
Friday	7:00AM - 7:00PM
Saturday	7:00AM - 6:00PM
Sunday	Closed

Directions



1/21/2019

South Carolina Appellate Case Management System

Appellate Case No.

CLERK OF COURT
SOUTH CAROLINA
COURT OF APPEALS

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Cases

Case Search

Participant Search

Case Information: 2018-000564

Court:	Court of Appeals	Classification:	Appeal - General Sessions - Other
Short Title:	The State v. George Cleveland, III View Full Title	Case Status:	Initial Briefing
Consolidated:			<i>R.P. 80</i>
Filed Date:	03/30/2018	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Greenville (2012GS2307504)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	George Cleveland, III	N	Self Represented
Respondent	The State	N	Matthew C. Buchanan

Views

Display: Descending

Event Information

Filed Date	Event Information	Doc
01/04/2019	Non-Dispositional Decision - Extension Granted	
12/31/2018	Motion - Extension of Time (1st)	
11/21/2018	Non-Dispositional Decision - Order	
10/12/2018	Motion - Hold in Abeyance Appeal pending Trial Court Motion	
09/24/2018	Correspondence - Incoming (Order from Supreme Court)	
09/06/2018	Non-Dispositional Decision - Order	
08/07/2018	Motion - Hold in Abeyance the Filing of AIB/DOM	
07/06/2018	Correspondence - Outgoing (Other)	
06/27/2018	Transcript Documents - Other Correspondence	
06/13/2018	Non-Dispositional Decision - Order(motion to stay probation)	
06/11/2018	Motion - Stay / Supersedeas (including lifting of automatic stay) - Probation	
06/06/2018	Transcript Documents - Letter to Court Reporter challenging transcript	
05/18/2018	Non-Dispositional Decision - Order(motion to amend NOA)	
05/11/2018	Motion - Amend NOA	
05/11/2018	Deficiency - Correction	
05/11/2018	Transcript Documents - Transcript Ordered	
04/18/2018	Deficiency - Deficiency Letter Sent	
04/16/2018	Correspondence - Incoming (Address Change)	
04/13/2018	Correspondence - Returned as undeliverable	
04/06/2018	Notice of Appeal (Criminal) - Initial(amended)	
04/05/2018	Non-Dispositional Decision - Order	
04/05/2018	Motion - Return	
04/02/2018	Correspondence - Incoming (2nd Copy of Motion to Stay)	
04/02/2018	Correspondence - Outgoing (Request for Return)	

1/21/2019

03/30/2018	Motion - Stay / Supersedeas (including lifting of automatic stay)
03/30/2018	Notice of Appeal (Criminal) - Initial



RP-81

ARREST WARRANT

5005
7-16-12

2012A2330200168

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE

12-98583

against

George Cleveland, III

Address: 219 Savannah Dr

South Carolina, SC 29678-

Sex: M Race: B Height: 6 3 Weight: 251

DL State: SC DL #: [redacted]

DOB: 1978 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Barry Brown - 0045

Offense: Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value \$10,000 or more

Offense Code: 3468

Code/Ordinance Sec: 16-21-0080

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant George Cleveland III

on 7-12-2012

A. Grazioplene
A. GRAZIOPLENE
Sheriff of Greenville County

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

Garrett

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Personally appeared before me the affiant Barry Brown who

being duly sworn deposes and says that defendant George Cleveland, III

did within this county and state on or about 5/7/2012 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value \$10,000 or more

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT, AN INVESTIGATOR WITH THE GREENVILLE COUNTY SHERIFFS OFFICE, HAS WRITTEN DOCUMENTATION FROM CARMAX OF GREENVILLE LOCATED AT 2800 LAURENS RD, THAT DEFENDANT DID SELL THEM A STOLEN 2011 FORD FUSION. AFFIANTS INVESTIGATION FOUND THE STOLEN VEHICLE TO HAVE A VIN FROM A SALVAGE 2010 FORD FUSION. A SEARCH WARRANT EXECUTED AT DEFENDANTS RESIDENCE FOUND THE SALVAGE FORD FUSION FROM WHICH THE VIN WAS REMOVED AND PLACED ONTO THE STOLEN FORD FUSION THAT WAS SOLD TO CARMAX OF GREENVILLE. THE STOLEN VEHICLE WAS VALUED AT \$27,000, WHICH BELONG TO DUVALL FORD IN CLAYTON, GA.

Signature of Affiant

B. Brown

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 Mcgec Street

Greenville, SC 29601-

Affiant's Telephone

COMPUTER ENTERED

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/7/2012 defendant George Cleveland, III

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value \$10,000 or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me

on 7/5/2012

[Signature] (L.S.)
Signature of Issuing Judge

Judge Code: 5077

Judge's Address

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

R.P. 88

ARREST WARRANT

N-201731

5005

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE

12-00328

against

George Cleveland, III

Address: 219 Savannah Dr

South Carolina, SC 29678-

Phone: SSN: Sex: M Race: B Height: 6 3 Weight: 251

DL State: SC DL #: DOB: /1978 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Barry Brown - 0045

Offense: Vehicle / Remove, falsifying VIN intending to conceal identity

Offense Code: 0536

Code/Ordinance Sec: 16-21-0040(A)(2)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant George Cleveland on 6-21-12

[Signature] AC Sexton
KLOUEIS
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Chick Springs Summary Court
2801 Wade Hampton Blvd. Suite 302
Fayets, SC 29687

[Signature]
Chick Springs

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Personally appeared before me the affiant Barry Brown who

being duly sworn deposes and says that defendant George Cleveland, III

did within this county and state on or about 6/21/2012

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Vehicle / Remove, falsifying VIN intending to conceal identity

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT, AN INVESTIGATOR WITH THE GREENVILLE COUNTY SHERIFFS OFFICE, FOUND DEFENDANT TO BE IN POSSESSION OF A 2012 NISSAN VERSA. AFFIANT FOUND THE PUBLIC VIN TO BE INCORRECT AND FOUND THE SECONDARY VIN TO HAVE BEEN ALTERED AND COVERED UP BY SPRAY PAINT. THE RECEIPT TO THE SPRAY PAINT USED, WAS FOUND TO BE IN DEFENDANTS POSSESSION UPON ARREST. THIS INCIDENT OCCURRED AT CARMAX, 2800 LAURENS RD IN GREENVILLE COUNTY.

Signature of Affiant

[Signature: Barry Brown]

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/21/2012 defendant George Cleveland, III

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Vehicle / Remove, falsifying VIN intending to conceal identity

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 6/21/2012

Signature of Issuing Judge [Signature] (L.S.) Judge's Address

Signature of Issuing Judge [Signature] Judge's Telephone

Judge Code: 5701

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

R.P. 83

APPELLANT'S FINAL BRIEF

R.P. 84

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Anderson County

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JAN 15 2018

SC Court of Appeals

Case No. 2012-GS-23-07504

Appellate Case No. 2018-000564

The State of South Carolina.....Respondent

v.

George Cleveland III.....Appellant

APPELLANT'S FINAL BRIEF

George Cleveland III

408 Hunter Street

Seneca, S.C. 29678

864-784-7223

gcleveland1375@gmail.com

Pro se Appellant

South Carolina Department of Probation, Parole & Pardon Services

c/o Mr. Matthew C. Buchanan, General Counsel

Post Office Box 50668

Columbia, S.C. 29250

Attorney for the Respondent

R.p. 85

TABLE OF CONTENTS

	pages (s)
Table of Authorities	iii
Statement of Issues on Appeal	1
Statement of the Case	2-3
Standard of Review	3,5
Argument (s)	
Judge McIntosh Lacked Jurisdiction to Impose the 90-day Sentence for Restitution Arrears on February 23, 2018 under the Dyer Act.....	4-5
Judge McIntosh Lacked Jurisdiction to Impose the 90-day Sentence for Restitution Arrears on February 23, 2018 under S.C. Const. art. I, § 19	5-6
Conclusion	7

R.p. 86

(a)

TABLE OF AUTHORITIES

<u>Cases</u>	page (s)
<u>Ex parte Hollman</u> 79 S.C. 9, 60 S.E. 19, 14 (1908)	6
<u>State v. Gentry</u> 363 S.C. 93 (2005)	3,5-6
<u>United States v. Cotton</u> 535 U.S. 625 (2002)	2-3,5-6
 <u>S.C CONST</u>	
S.C. Const. art. I, §19	2,6-7
 <u>Court Rule</u>	
Rule 59 (e) SCRCP	2
 <u>Statutes (S.C. and the U.S.)</u>	
S.C. Code Ann. § 16-21-0080 (2010)	5
18 U.S.C.A. § 2312 (2006)	2,4,7
18 U.S.C.A. § 2313 (2006)	2,4,7

R.P. 87

(b)

Statement of Issues on Appeal

Whether the Anderson County General Sessions Court had Jurisdiction to impose 90-day Jail sentence under the Dyer Act.

Whether the Anderson County General Sessions Court had Jurisdiction to impose 90-day Jail sentence under S.C. Const. art § 19.

R.p. 88

(c)

Statement of the Case

On October 12, 2017, Appellant Cleveland was served with a "Financial" Probation Citation from the Oconee County Probation Office in Walhalla, S.C. for three-thousand-three-hundred dollars (\$3,300.00) arrears. R.pp. 30-31.

On February 23, 2018, Circuit Court Judge R. Lawton McIntosh (hereinafter Judge McIntosh) heard arguments from Appellant Cleveland that the Court lacked Jurisdiction to hear the "financial" probation citation on the grounds that the possession of stolen vehicle conviction that connected to the citation was stolen from Georgia; crossed state lines into South Carolina triggering the Dyer Act; 18 U.S.C.A. § 2313 ("Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any motor vehicle... which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."); R.p. 26; lines 19-25; R.p. 27; lines 1-2, and the State did not object or provide a defense, see generally R.p. 27 lines 8-10; R.p.27; lines 1-10; and that for the first time in Appellant Cleveland's March 19, 2018 filed Rule 59 (e) SCRC Motion another Jurisdictional argument was introduced on the ground that S.C. Const. art I, § 19 barred Judge McIntosh from imposing the 90-day jail sentence, *id.* "Subject Matter Jurisdiction ... involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of

Rip. 89

whether the error was raised in [circuit] court”... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100 in this case at the Anderson County Court of General Sessions, and subsequently ordered Appellant Cleveland to spend 90-days in the Anderson County detention center for “willfully violat[ing] the terms of his (Appellant Cleveland’s) probation...” R.p. 27; lines 11-15. On March 22, 2018, Judge McIntosh denied the Rule 59 (e), *id*, motion without ruling on the merits of the post-trial motion. *Id*.

On March 30, 2018, Appellant Cleveland’s Notice of Appeal was filed in this court. R.p. 9. On April 02, 2018, Appellant Cleveland’s Motion to Stay the Probation pending appeal was filed. R.p. 32. On the same day, the Clerk’s Office of this Court invited the State to file a Return. R.p. 34. On April 05, 2019, this Court denied the Motion to Stay Probation. R.p. 34. On May 11, 2018, the trial transcript was ordered. R.p. 34. After another Motion to Stay Probation pending Appeal was denied by this Court, and the South Carolina Supreme Court. An extension Granted to file the Initial Brief, this Appeal follows. R.p. 34.

Standard of Review

“Subject Matter Jurisdiction ... involves a court’s power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in [circuit] court”... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363

R.p. 90

Argument

Judge McIntosh Lacked Jurisdiction to Impose the 90-Day Sentence
For Restitution Arrears on February 23, 2018 Under the Dyer Act

Circuit Court Judge McIntosh (hereinafter Judge McIntosh) lacked Jurisdiction to hear the February 23, 2018 restitution arrears because the conviction of possession of stolen vehicle connected to the probation of this case under the 18 U.S.C.A. § 2312; a.k.a. the Dyer Act (“whoever transports interstate... a motor vehicle... knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.”).

Judge McIntosh was informed at the hearing of this very argument “[t]he vehicles in questions were stolen from Georgia.” R.p. 26; lines 21-23. “[Appellant Cleveland] bought the vehicles in South Carolina triggering Federal Jurisdiction of the Dyer Act, so that’s one of my biggest arguments.” R.p. 26; lines 24-25, and R.p. 27; lines 1-3. Judge McIntosh concluded: “I find it credible the agent’s statement that he doesn’t have jurisdiction — the court—doesn’t have jurisdiction to make him pay the restitution.” R.p. 27; lines 18-20. “I’ll give you 90 days from today.” R.p. 27; lines 23. Judge McIntosh rejected Appellant Cleveland’s argument that he review the submitted exhibits, and “make a finding on the actual evidence that [was] submitted.” R.p. 28; lines 8-9. The Court: “I’m going to find it on the testimony I

R.p. 91

heard..." R.p.28; line 10-11. The documents submitted into evidence was the actual arrest warrant (a/w no. "2012A2330200168") that reads in relevant part:

"that GEORGE CLEVELAND III did in Greenville County on or about the 7th of May, 2012 willfully and unlawfully receive, possess, conceal, sell, or dispose of a motor vehicle belonging to DUVALL FORD described as a 2011 Ford Fusion in violation of S.C. Ann. § 16-21-0080. R.p. 36. The sentence sheet connected to the 90-day jail sentence that is the arrest number is: "2012A2330200168". Duvall Ford is location in Clayton, Ga., not South Carolina, see R.pp.33,36,39 triggering federal jurisdiction under the Dyer Act because the 2011 Ford Fusion was reported stolen from Georgia, crossed State lines into South Carolina; accordingly, Judge McIntosh did not have Jurisdiction under the Dyer Act to sentence Appellant Cleveland to 90-days in jail for restitution arrears; under United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Standard of Review

"Subject Matter Jurisdiction ... involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in [circuit] court"... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Judge McIntosh Lacked Jurisdiction to Impose the 90-Day Sentence

For Restitution Arrears on February 23, 2018 Under S.C. Const. art. I.

§ 19

Art. I, § 19 of the South Carolina Constitution stats that:

“no person shall be imprisoned for debt.” *Id.* Judge McIntosh sentenced Appellant Cleveland to 90-days in jail for owing a debt of restitution. The court stated: “I think that you willfully not paid [your restitution].” R.p.27, lines 21-22. “I’ll give you 90-days from today.” *id.*, at line 23. As Appellant Cleveland argued in his Rule 59 (e) SCRPC: “[r]estitution is a [d]ebt is that which is due from one person to another, whether money, goods or services’ and whether payable at present or at a future time.” R.p. 5 Ex parte Hollman 79 S.C. 9, 60 S.E. 19, 14 (1908).

The Rule 59 (e) Motion, explicitly argued that Judge McIntosh was barred by S.C. Const. art. I, § 19 from imposing the 90-day Jail sentence because restitution is a debt under Ex parte Hollman, *id.*, R.p. 5. Judge McIntosh did not even rule on the merits of the Rule 59 (e) Motion by stating: “The Motion to Reconsider Sentence... is DENIED.” R.p.1. Regardless of whether the Jurisdiction issue was argued below, Cotton required this Court to determine whether S.C. Const. art. I, § 19 barred Judge McIntosh from imposing sentence on February 23, 2018. I submit that he did

not have Jurisdiction to impose sentence because Ex parte Hollman holds that

R.p. 93

Restitution is not a debt under S.C. Const. Art. I, § 19; therefore, Judge McIntosh did not have Jurisdiction under the S.C. Const. art. I, § 19 to sentence Appellant Cleveland to 90-days in jail for restitution arrears under United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Conclusion

Judge McIntosh did not have Jurisdiction to impose the 90-day jail sentence on February 23, 2018 for Restitution arrears because the stolen vehicle connected to the conviction in this case was stolen from Georgia, and recovered across State lines in South Carolina under the Dyer Act, and S.C. Const. art. I, § 19 because Restitution is not a debt under the S.C. Const, *id.*, Jurisdiction is the power for Judge McIntosh to hear this case on February 23, 2018, Appellant Cleveland did not forfeit or waive Jurisdiction on that day, nor would Appellant Cleveland have did so in the first instance; consequently, Appellant Cleveland respectfully request that this Court remand this case back to Judge McIntosh's court to determine whether he had Jurisdiction on February 23, 2018, and vacate the 90-day jail sentence of February 23, 2018.

R.P. 94

Respectfully Submitted,


s/

George Cleveland III, pro se

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: December 30, 2019

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

R.p. 95

The State, Respondent,

v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

Appeal From Greenville County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2021-UP-121
Submitted March 1, 2021 – Filed April 21, 2021

AFFIRMED

George Cleveland, III, of Seneca, pro se.

General Counsel Matthew C. Buchanan, of South
Carolina Department of Probation, Parole and Pardon
Services, of Columbia, for Respondent.

PER CURIAM: George Cleveland, III appeals the circuit court's revocation of ninety days of his probation. On appeal, he argues the circuit court did not have subject matter jurisdiction to revoke his probation based on the application of the

Dyer Act¹ and article I section 19 of the South Carolina Constitution. We affirm pursuant to Rule 220(b), SCACR.

R.P. 96

We find the circuit court had subject matter jurisdiction to revoke ninety days of Cleveland's probation. *See State v. Lee*, 350 S.C. 125, 132, 564 S.E.2d 372, 376 (Ct. App. 2002) ("Subject matter jurisdiction to revoke an individual's probation is conferred on the General Sessions Court by either the issuance of a probation violation warrant or the issuance of a probation violation citation and affidavit in lieu of a warrant."). In October 2017, a financial probation citation and affidavit was issued and served on Cleveland based on his alleged failure to "comply with the Court's probation order and [Cleveland's] agreement to pay a fine, restitution and supervision fees." Accordingly, because Cleveland was issued a probation violation citation, subject matter jurisdiction was conferred on the circuit court.²

Further, to the extent Cleveland argues the circuit court erred by revoking ninety days of his probation because it did not have the authority to do so under article I section 19 of the South Carolina Constitution, we find the court did not abuse its discretion. *See State v. Spare*, 374 S.C. 264, 268, 647 S.E.2d 706, 708 (Ct. App. 2007) ("The decision to revoke probation is addressed to the sound discretion of the [circuit] court."); *id.* ("This court's authority to review such a decision is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit [court's] decision was arbitrary and capricious." (quoting *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999))). Although Cleveland challenges the circuit court's ability to imprison him under article I section 19 of the South Carolina Constitution, our case law permits a circuit court to revoke probation for failure to make required payments of fines or restitution after the court determines on the record the defendant failed to make a bona fide effort to pay. *See id.* at 268, 647 S.E.2d at 708 ("Our appellate courts have continued to maintain that 'probation may not be revoked *solely* for failure to make required payments of fines or restitution without the circuit judge first determining on the record that the probationer has failed to make a bona fide effort to pay.'" (quoting *Hamilton*, 333 S.C. at 649, 511 S.E.2d at 97)). A review of the record supports the circuit court's finding Cleveland failed to make a bona fide effort to

¹ 18 U.S.C.A. § 2312 ("Whoever transports in interstate or foreign commerce a motor vehicle, vessel, or aircraft, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both).

² Although Cleveland raises the issue of subject matter jurisdiction under the Dyer Act, Cleveland pled guilty and was sentenced under South Carolina law. Thus, we find any issue related to the Dyer Act is without merit.

pay. *See id.* at 269, 647 S.E.2d at 709 ("The trial court may infer that the failure to pay is intentional where a probationer has the ability to pay a fee, but does not do so." (quoting *Joseph v. State*, 3 S.W.3d 627, 641 (Tex. App. 1999))). Thus, the circuit court did not abuse its discretion by revoking ninety days of Cleveland's probation.

Rip. 97

AFFIRMED.³

LOCKEMY, C.J., and HUFF and HEWITT, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

Jun 08 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Ripr 98

Case No.: 2012-GS-23-07504, 07507

Appellate Case No. 2018-000564

The State,..... Respondent

v.

George Cleveland III,.....Appellant

APPELLANT'S PETITION FOR REHEARING

George Cleveland III

400 Hunter Street

Seneca, S.C. 29678

(864) 784 7223

Pro se Appellant

South Carolina Department of Probation

Parole and Pardon Services

Mr. Matthew C. Buchanan, General Counsel

Post Office Box 50666

Columbia, S.C. 29250

(803) 734-9220

APPELLANT'S PETITION FOR REHEARING:

R.P. 99

Appellant George Cleveland III, pro se, respectfully submits this Petition for Rehearing of State v. George Cleveland III, Op No. 21-UP-121 (S.C. Ct. App. Filed April 21, 2021 unpublished opinion which Affirmed the lower court's order sentencing Appellant Cleveland to 90-days in jail for restitution arrears pursuant to Rule 221 (a) SCACR because this court overlooked my argument that subject matter jurisdiction can be invoked at any time. United States v. Cotton 535 U.S. 625, 630 (2002), and this Court disregarded my argument that S.C. Const. art. I §19 barred the General Sessions Court from jailing me for restitution arrears. State v. Phillips 416 S.C. 184, 187 (S.C. 2016); ("Any material fact or principle of law [that] has been overlooked or disregarded..." is cognizable for this court to Grant this Petition for Rehearing of this case.

PRINCIPLE OF LAW HAS BEEN OVERLOOKED

The principle of law has been overlooked in Appellant Cleveland's argument that the General Sessions court did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because this court citation of several cases are not applicable to my case.

In my Final Brief, I explicitly argued that the General Sessions court below did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because the vehicles connected to this case were reported stolen out of

Georgia, and recovered in South Carolina. Since the vehicles crossed state lines, subject matter jurisdiction belongs to the federal government, not the government of South Carolina under the 18 U.S.C.A. §2312 ("The Dyer Act") ("whoever transports interstate... a motor vehicle the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."), see appellant's Final Brief filed in this court at pp. 2-5. This court overlooked this principle of law above because this court did not explain or cite why United States v. Cotton 535 U.S. 625, 630 (2002) did not apply to my subject matter jurisdiction. In Cotton, the Supreme Court of the United States held that "[s]ubject matter jurisdiction... involved a court's power to hear a case, can never be forfeited or waived, [c]onsequently, defects in subject matter jurisdiction require correction regardless of wh[en] the error was raised..."

R.P.100

This court cited State v. Lee 350 S.C. 125, 132, 564 S.E. 2s 372, 376 (ct.app. 2002), and State v. Hamilton 333 S.C. 643,647, 511 S.E. 2d 94, 96 (ct. app. 1999) to support its' reasoning that the General Sessions court below "had subject matter jurisdiction to revoke ninety days of Cleveland's probation." I will explain each case in turn.

In Lee he violated conditions of his parole and probation and subsequently violated by the parole board, and the General Sessions court. Lee 350 S.C. 125, 132, 564 S.E. 2d 372, 376 (ct. app. 2002) Lee argued the General Sessions court did not have subject matter jurisdiction because that court could not place him on probation and on parole at the same time, Lewis, id., at 132. This court disagreed, and affirmed Lee's appeal.

In State v. Spare¹ 374 S.C. 264, 268, 647 S.E. 2d 706, 708(ct. app. 2007); Spare violated his probation for falling behind on restitution payments. His chief *R.p. 101* argument was that he made a bona fide effort to pay his restitution. The General Sessions court disagreed, and concluded he willfully failed to pay his restitution; however, this court disagreed with the General Sessions court, and concluded Spare did not willfully fail to pay his restitution, and remanded the case for a new probation revocation hearing, Spare, id., at 270-71.

None of the above cases provide any Logic to my probation 90-day revocation case. Specifically, Lewis, Spare, and Hamilton do not align with my argument because my arguments connected with subject matter jurisdiction invoking a federal case, and federal statute, it is not Lewis' argument of probation, and parole jurisdiction issues, or Spare's argument of his bona fide effort to pay restitution. General Sessions courts cannot invoke power that court do not have. Not Oconee, Greenville, or Anderson, or no South Carolina county. Not in 2012-13. R.pp. 36, 41-47 when I was sentenced to prison, and probation, not in 2018 when this case was filed, and not in 2021 when this Petition for Rehearing was filed because there is no statute of limitations on subject matter jurisdiction. If a lower court has no power to impose a prison sentence, a probation sentence, a probation revocation sentence, or any punishment that power does not yield to the lower courts based on time; therefore, this court overlooked the principle of law of subject matter jurisdiction

¹ See also State v. Hamilton 333 S.C. 642, 647, 511 S.E. 2d 94, 96 (ct. app. 1999). This case is similar to the Lewis & Spare.

cannot be waived or forfeited, and it can be raised at any time under United States v. Cotton 535 U.S. 625, 630 (2002).

PRINCIPLE OF LAW HAS BEEN DISREGARDED

R.p. 102

The principle of law has been disregarded in Appellant Cleveland's argument that the General Sessions court did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because this court several cases cited are not applicable to my case.

In my Final Brief, I explicitly argued that the General Sessions court below did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because S.C. Art. I §19 (See pp. 6-7 of Appellant's Final Brief) states: "No person shall be imprisoned for debt except in cases of fraud"... Under United States v. Cotton 535. This court disregarded the case law connected to the South Carolina Constitution. In particular, I cited Ex parte Hollman 79 S.C. 9, 60 S.E. 19, 14 (1908); which reasoned S.C. Art. I §19 does not allow for a restitution arrears to be jailed because "[r]estitution is a [d]ebt is that which is due from one person to another..." United States v. Cotton 535 U.S. 625, 630 (2002).

This court states that "our case law permits a circuit court to revoke payments of... restitution, and cited Spare, 268, 647 S.E. 2d at 708, and Hamilton, 333 S.C. at 649, 511 S.E. 2d at 97. But neither of these cases mentions nothing about S.C. Art. I §19 granting South Carolina Appellate Courts the power to publish case law that conflicts with the requirements of Art. I §19, conversely, provisions of the South Carolina Constitution are "mandatory". therefore, this court overlooked the

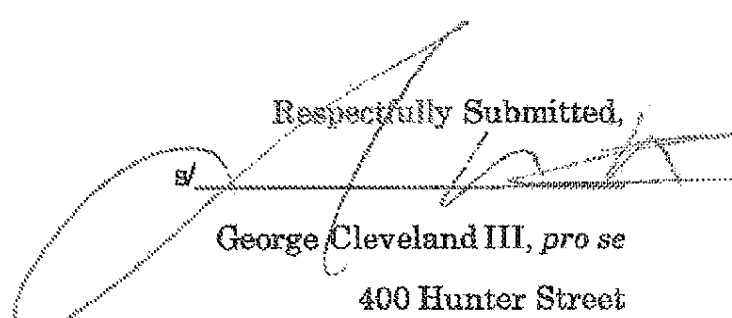
principle of law of subject matter jurisdiction cannot be waived or forfeited, and it can be raised at any time under United States v. Cotton 535 U.S. 625, 630 (2002).

CONCLUSION

R.p. 103

Based on the foregoing, I respectfully request this court to Grant this Petition for Rehearing, and determine whether United States v. Cotton 535 U.S. 625, 630 (2002) can be waived, or forfeited, or have a statute of limitations on subject matter jurisdiction for interstate vehicle theft under the Dyer Act, and under S.C. Const. Art. I §19 with or without further Briefing, or documents respectively.

Respectfully Submitted,



George Cleveland III, pro se
400 Hunter Street
Seneca, S.C. 29678
(864) 784 7223
gcleveland7475@gmail.com

Dated: June 07, 2021

The South Carolina Court of Appeals

The State, Respondent,

R.p. 104

v.

George Cleveland, III, Appellant.

Appellate Case No. 2018-000564

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Linder C.J.
Thomas C. Hoff J.
3L L J J.

Columbia, South Carolina

cc:
George Cleveland, III
Matthew C. Buchanan, Esquire
The Honorable R. Lawton McIntosh

FILED
Jul 14 2021