

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

RECEIVED

MAY 16 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARIUS M. PERRY,

APPELLANT

APPELLATE CASE NO. 2013-000067

RECORD ON APPEAL

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WITNESS

BY:

PAGE NO.

NO witnesses were called.

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E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF PROBATION PARDON
 2 PAROLE VERSUS DARIUS PERRY, MONDAY, JANUARY 7, 2012 AT
 3 11:20 A.M..)

4 (DEFENDANT DARIUS PERRY ENTERING COURTROOM FROM
 5 HOLDING CELL.)

6 THE COURT: You are Darius Perry?

7 MR. PERRY: Yes, sir.

8 THE COURT: You represented by Ms. Sikora?

9 MR. PERRY: Yes, sir.

10 THE COURT: You satisfied with her services?

11 MR. PERRY: Yes, sir.

12 THE COURT: I have in front of me an arrest warrant.
 13 It looks like you were arrested December 3rd of 2012; is
 14 that correct?

15 MR. PERRY: Uh it was I think November 30th.

16 THE COURT: Where were you arrested?

17 MR. PERRY: At Flint Hill. I was took to Rock Hill
 18 Police Department on the 30th.

19 THE COURT: For this or for something else?

20 MR. PERRY: I think it was Department of Probation but
 21 it was for the same thing.

22 MS. SIKORA: And for this but then they transferred
 23 him here.

24 THE COURT: All right. You have been served with this
 25 warrant on December 3rd; that is the warrant alleges you

1 violated probation; is that correct?

2 MR. PERRY: Yes, sir.

3 THE COURT: The warrant alleges you violated the
4 sentence that I imposed here in York County on or about the
5 28th day of November 2011, resisting arrest and failure to
6 stop for a blue light. You got one year suspended to one
7 year probation. Is that the correct sentence?

8 MR. PERRY: Yes, sir.

9 THE COURT: It looks like you had a couple of prior
10 violations and I extended your case one time.

11 Your current violations is alleged in the warrant are
12 that you had failed to follow your agents advice and
13 instructions; that you missed reports in May; July twice.
14 That you have not completed your public service having
15 completed zero hours. That you did not notify your agent
16 when you were fired from Taco Bell. Are those things true?

17 MR. PERRY: Yes, sir. But I actually I was working at
18 Taco Bell until I stopped going to see my probation
19 officer.

20 THE COURT: All right, I find these are substantial
21 violations. I'll be glad to hear from your attorney and
22 then a couple of individuals who look like they may want to
23 speak I'll be glad to hear from them.

24 MS. SIKORA: May it please the Court, Your Honor.

25 Essentially what my client tells me in speaking with

1 him that he moved from his dad to his granddaddy's house.
 2 His father lived in Fort Mill and there was a group of
 3 friends that he had up there that he didn't feel were a
 4 very good influence on him and he's do better living at
 5 grandfather's house to be away from these individuals. In
 6 speaking with Mr. Perry and his family they tell me he was
 7 attending South Pointe High School and in fact doing very
 8 well and was very close to graduation as well as holding
 9 down a job initially at Taco Bell. His grandpa lives in
 10 Rock Hill so when he moved to Rock Hill the Taco Bell job
 11 was in Fort Mill off 521 and it was very difficult for his
 12 grandfather to get him back and forth to Fort Mill for his
 13 job.

14 Essentially my client did not tell his grandfather
 15 that he was supposed to be reporting to probation. His
 16 grandfather didn't know anything about it, Your Honor, and
 17 said I don't know why Darius just didn't tell me because I
 18 would have been happy you know to take him so that he can
 19 do his public service and to report to probation given that
 20 he lives in Rock Hill and he would have to report in Rock
 21 Hill.

22 Darius essentially tells me that he feels like he was
 23 put Grandpa out from the beginning his wife had passed away
 24 there were some difficulties within the family and given
 25 what his grandfather was already doing for him didn't want

1 to push it, Your Honor. I think the classic saying hind
2 sight is twenty twenty and he should have been honest with
3 him so he wouldn't be in this situation in the first place.

4 His grandfather and his aunt do wish to address the
5 court, Your Honor. His father is also here in the
6 courtroom but is just here in support of him and is not
7 wishing to address the court. If Your Honor would be
8 willing to hear from them.

9 THE COURT: I certainly would.

10 Come forward to where the officer says and one at a
11 time give us your name.

12 MS. SIKORA: Mr. Perry.

13 THE COURT: Yes, sir, your name.

14 A. Aaron Thomas Darius, Junior.

15 THE COURT: All right. You need to speak up and tell
16 me what you want to.

17 MR. PERRY: Well when he got in this trouble the last
18 time I didn't know anything about it and I could have done
19 paid it or whatever. You know then he got in school and he
20 was doing very well and he's a real smart young man. I'm
21 not saying it because he's my grandson but he is. And I
22 been trying to do everything I can you know to help him out
23 and this type thing because he's my grandson. I only have
24 two great grandson's but I got two great great grandsons
25 and they eight months old. But I been - He's been doing

1 well ever since he stayed with me. I been doing everything
 2 I can for him and he hasn't give me any trouble. But the
 3 only thing I'm saying that he's really a smart young man.
 4 I was trying to get him to go to college and be college
 5 potential. And I'll still do anything I can for him.

6 THE COURT: Thank you. I appreciate that.

7 MR. PERRY: Thank you, sir.

8 THE COURT: Yes, ma'am.

9 A. My name is Tammy Perry and I am his aunt. And for the
 10 past couple of months I been taking a very active role or a
 11 more active role in his schooling and I think the time line
 12 when his attorney read is a little bit off because he did
 13 live in Fort Mill with his father when he was working at
 14 Taco Bell initially when the probation started.

15 He was having transportation issues because of the
 16 transportation of his father so while he was working he
 17 paid several different people to get back and forth to work
 18 when his father wasn't able to get him there. And then
 19 once he stopped working at Taco Bell that's when he was
 20 unable to continue to pay for the probation. He did state
 21 to me once that he walked and it was from Fort Mill to Rock
 22 Hill to try to do the community service the day it was
 23 supposed to be done but the place was closed by the time he
 24 got there because it was a very long ways so he is sort of
 25 prideful with not asking at times for help from people but

1 he is a very good kid.

2 I mean I've been at school, I talked to several of his
3 teachers and they all say the same thing. He's very
4 intelligent, he will have an opportunity to go to
5 Renaissance that I want to make sure that you will allow
6 him to go ahead and finish this semester so that he will be
7 - He's so close to graduating if he is able to go home he
8 will be able to go back to Renaissance to complete his
9 credits to get his high school diploma and not just a GED.
10 That's how close he is to his diploma.

11 I have also recommended him and he was very willing to
12 because of the issues with the family and with just his
13 upbringing and things that he has gone through we have
14 gotten him enrolled in the Catawba Mental Health program so
15 he has already completed one counseling session with the
16 counselor at the school. And she is willing to continue
17 his sessions as well even if he does have to go to therapy
18 he has to go to Renaissance.

19 So I just wanted you know plead with you that it was a
20 mistake that he has made. It has not bene handled in the
21 best way. Now that everyone is aware of what's going on if
22 there is anything else that needs to be paid I hope we have
23 the opportunity to do that and just get him back into
24 school instead of in there. That's all.

25 MS. SIKORA: Thank you.

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THE COURT: Okay. Thank you. Yes, ma'am.

AGENT FORTE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

AGENT FORTE: In February of 2012 he was kicked out of Nations Ford. He had a hearing here on April the 20th where the case was continued and advised if he missed another report or tested positive for any illegal drugs to arrest him immediately. He came in and reported on April 26 where he was referred back to Public Service to set him up for an assessment so we could send him to a work site. He showed up for that. May the 18th he failed to begin his public service. May 24th failed to report. Did a home check on him on May the 25th. Left messages for him to come see me. No sign of him.

Went out to his Taco Bell employer out on Highway 521 in Indian Land and spoke to his manager, said hadn't seen him in a while. June 11th his time sheet was pulled at Public Service. Never seen him again until he was arrested. He was actually in a house where police officers were looking for another wanted offender and they came across Mr. Perry. That's where he got picked up for failure to identify and that was in November. Then we served him with this warrant December 3rd.

THE COURT: All right, anything else? Anything you want to say, Mr. Perry?

1 MR. PERRY: I just would like to say that I knew what
2 I did was a mistake. And if I had another chance I
3 probably - I know I'd do the right thing and I make up my
4 mind because back there behind those bars I know I can't do
5 what I want or however I want to do it is not the feeling I
6 want to be in. And it's a feeling nobody would want to be
7 in because it's like an entrapment. I mean I just know if
8 I get out I'll do the right thing.

9 THE COURT: Well I have my doubts.

10 How much time has he served?

11 MS. SIKORA: He told me, Your Honor, that he'd been
12 locked up; he understood he had a hold placed on him
13 whenever he got locked up on the false info, so I counted
14 forty-one days if we're going to November 30th as the start
15 date. And he told me he did two weeks initially on the
16 charge when he first got arrested.

17 THE COURT: So that will be fifty-five days?

18 MS. SIKORA: Uh-huh.

19 THE COURT: I'm gonna revoke his probationary sentence
20 and give him credit for fifty-four days. Thank you.

21 (END OF TRANSCRIPT OF RECORD.)
22
23
24
25

CERTIFICATE OF REPORTER\

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 7th day of Januray, 2012.

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

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

My Commission Expires: 1/21/2021

DATE: 3-18 / 2013

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

YORK

THE STATE

against

DARIUS MAURICE, JR PERRY

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 7/31/2012

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

Paul Forte

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name DARIUS MAURICE, JR PERRY

Address FORT MILL, SC 29715

Phone

Sex Male Race Black Height

Weight Birth dat

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

Constable or Law Enforcement Officer

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

Larry M. Perry Jr.

on the 3 day of Dec 2012

Larry Davis
Constable or Law Enforcement Officer

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

(L.S.)

Signature of Judge

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Probation

ARREST WARRANT

Indictment Number 11-GS-46-03948, 11-GS-46-03949

Warrant Number W-46-12-0122

State Identification No. (SID) 02013422

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

It appearing from the attached affidavit that there are reasonable grounds to believe that DARIUS MAURICE, JR PERRY, did on the 31 day of July, 2012 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation violation concurrent to Section 24-21-430 in that the Defendant violated the conditions of his probation sentence as imposed by Judge John C. Hayes at the 11/28/2011 term of General Session Court held in York County SC and continuation order imposed by Judge John C. Hayes on 4/20/2012.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DARIUS MAURICE, JR PERRY before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at ROCK HILL, S. C. this 31 day of July, 2012.

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

County of YORK

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Paul Forte, who, first being duly sworn, deposes and says that DARIUS MAURICE, JR PERRY did within this County and State on the 31 day of July, 2012, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Probation violation concurrent to Section 24-21-430 in that the Defendant violated the conditions of his probation sentence as imposed by Judge John C. Hayes at the 11/28/2011 term of General Session Court held in York County SC and continuation order imposed by Judge John C. Hayes on 4/20/2012.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Failure to follow the advice and instructions of supervising agent; Failed to report as directed by missing reports on 5/25/2012, 7/12/2012 and 7/13/2012. Failed to complete Public Service Employment as directed by completing 0 hours as of 7/31/2012. Failed to be gainfully employed. Failed to notify agent that he had been fired from Taco Bell (Indian Land location) during June 2012. Failed to pay supervision fees, and court costs as directed by being in arrears on all accounts as of warrant issue date. Such actions constitute the violation of sections 1, 5, 7, 9, 10 and special conditions of subjects probationary agreement signed and dated by offender on 11/28/2011.

Sworn to and Subscribed before me
this 31 day of July, 2012.

Affiant

Signature of Notary Public (L.S.)

10/13/16

My Commission Expires

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

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 16, 2013

Robert M. Pachak

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

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SC Court of Appeals

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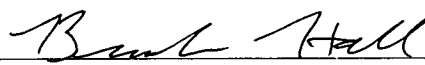
DARIUS M. PERRY,

APPELLANT

APPELLATE CASE NO. 2013-000067

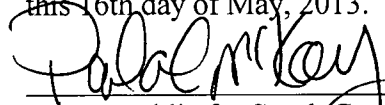
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Matthew Buchanan, Esquire, at South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 16th day of May, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 16th day of May, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.