

No.

IN THE

Supreme Court of the United States

George Cleveland III.....Applicant

v.

State of South Carolina.....Respondent

ON EMERGENCY APPLICATION TO STAY PROBATION PENDING

DISPOSITION OF THE PENDING APPEAL IN THE

SOUTH CAROLINA COURT OF APPEALS

George Cleveland III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Proceeding *pro se*

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**PARTIES / COURTS CONNECTED TO THIS APPLICATION TO
STAY PROBATION**

Probation Agent Joshua Sample
South Carolina Department of Probation, Parole, and Pardon Services
County Office: Oconee County, S.C. Probation, and Parole Office
203 Booker Drive
Walhalla, S.C. 29691
Office number: 864-638-4255

Office of General Counsel
Matthew C. Buchanan; General Counsel
Post Office Box 50666
Columbia, S.C. 29250
Office number: 803-734-9440

South Carolina Supreme Court
Office of the Clerk
Daniel E. Shearouse; Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211
Office number: 803-734-1080

South Carolina Court of Appeals
Office of the Clerk
Jenny Abbott Kitchings; Clerk of Court
Post Office Box 11629
Columbia, S.C. 29211
Bus number: 803-734-1890

Circuit Court Judge J. Cordell, Jr.
Post Office Box 8002
Anderson, S.C. 29622
Bus number: 864-260-4636

South Carolina Office of Attorney General
Alan M. Wilson, Attorney General
Post Office Box 11549
Columbia, S.C. 29211

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

Despite there being a Court Rule in the South Carolina Appellate Courts (SCACR) (S.C. Court of Appeals and Supreme Court Collectively) requiring a automatic Stay of Probation after *"[t]he service of a Notice of Appeal by a criminal defendant shall operate as a stay of the execution of the of the sentence until the appeal is finally disposed of"*... the South Carolina Court of Appeals and the South Carolina Supreme Court have both failed to follow, and enforce its own Rules. See Rule 246 (a) South Carolina Appellate Court Rules (hereinafter SCACR), App. 1 (copy of Rule 246 ((a)) SCACR). I'm respectfully a Stay of Probation pending the disposition of my Appeal connected to this Stay Application that is pending in the South Carolina Court of Appeals. Both the South Carolina Court of Appeals, and the South Carolina Supreme Court have denied my Motion to Stay of Probation. This Emergency Stay of Probation Application also request that this Court Stay the **March 29, 2019** scheduled Court hearing regarding me being cited by the Oconee County, S.C. Probation Office for again being behind in my restitution payments at the Oconee County, S.C. General Sessions (Criminal) Court in Walhalla, S.C, that most certainly put back in jail by the Circuit Court Judge, id.; therefore, this is an urgent Application to Stay my Probation pending disposition of the Appeal pending in the South Carolina Court of Appeals.

This case pending is pending in the South Carolina Court of Appeals, see App. 2 (docket reports). This Appeal started on October 05, 2017, on a "Financial Probation Citation"). App. 3 (front of the affidavit citation).

In the "DESCRIPTION OF VIOLATION" it states: "The above named defendant [George Cleveland III] has failed to comply with the court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees." App. 4 (back of financial citation affidavit).

The unpaid balance for restitution is \$1,560.00., and a jail sentence of 90-days was imposed on February 23, 2018. App. 4, 6-7.

The Dyer Act U.S.C.A. 18 § 2312 et. seq., a federal statute, I invoked at the February 23, 2018 Probation Citation hearing held at the Anderson County, S.C. arguing that the vehicle that convicted me was stolen from Georgia, and I (George Cleveland III) took possession of the vehicle by me across State Lines in South Carolina General Sessions (Criminal) Court depriving that Court of jurisdiction to hear and impose a 90-day jail sentence in this case. App. 6-7.

To prevent another jail sentence for falling behind on restitution at the scheduled March 29, 2019 Financial Citation hearing at the Oconee County, S.C. General Sessions (Criminal) Court in Walhalla, S.C., Circuit Court Judge J. Cordell Maddox, Jr. Scheduled to preside. App. 8. And Stay any and all enforcement of probation pending the disposition of the appeal in the South Carolina Court of Appeals respectfully.

COURT ORDERS BELOW

The orders of the Anderson County, S.C. in Anderson, S.C. General Sessions (Criminal) Court is not reported, but Appended hereto. The order denying the Moton to Stay the Probation is not reported, but Appended hereto. App. The order denying the Motion to Stay Probation by the South Carolina Supreme Court is not reported, but Appended hereto. App. 9-11.

JURISDICTION

The Circuit Court of Anderson County, S.C. General Sessions (Criminal) Court in Anderson, S.C. On March 30, 2018, my Motion to Stay Probation was filed, and on April 06, 2018 my Notice of Appeal was filed in the South Carolina Court of Appeals App. 12-13.

On April 05, 2018, my Motion to Stay Probation was denied by the South Carolina Court of Appeals. App. 14.

On June 11, 2018, I refiled my Motion to Stay Probation in the South Carolina Court of Appeals. App. 21. And that motion was denied on June 13, 2018. On September 24, 2018, the South Carolina Supreme Court denied my motion to Stay Probation. App. 10-11.

This court has jurisdiction to enter a Stay of Probation of Anderson County, S.C. General Sessions (Criminal) Court of February 23, 2018 pending review of the Appeal by the South Carolina Court of Appeals because I invoked a federal statute under the *Dyer Act* 18 U.S.C.A. §2312, *et. seq.* App. 15. See also 28 U.S.C.A. §2101 (f). App 16. (*"In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party*

aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court..."),

REASONS FOR GRANTING THE STAY

To obtain a stay pending Appellate Review in the South Carolina Court of Appeals: “1. [T]here must be a reasonable probability that four members of this court would consider the underlying issue sufficiently meritorious to justify notation of probable jurisdiction. 2. [T]here must be a significant possibility of reversal of the lower court’s decision. 3. [T]here must be a likelihood that irreparable harm will result if the lower court’s decision is not stayed.” See *Ledbetter v. Baldwin* 479 U.S. 1309 1986, *id.*, at 1309-11 (*hereinafter Ledbetter*).

I. THERE IS A REASONABLE PROBABILITY THAT FOUR JUSTICES OF THIS COURT WOULD CONSIDER THE UNDERLYING ISSUE SUFFICIENTLY MERITORIOUS TO JUSTIFY NOTATION OF PROBABLE JURISDICTION

This court would determine reasonable probability that four justices of this court would consider the underlying issue sufficiently meritorious to justify notation of probable jurisdiction because the underlying issue in the pending appeal in the South Carolina Court of Appeals I argue the Anderson County, S.C. General Sessions (Criminal) Court did not have jurisdiction to impose the 90-day jail sentence on February 23, 2018 for falling behind on restitution payments under 18

*U.S.C.A. § 2312 a.k.a. the Dyer Act*¹ (“*whoever transport 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*”), this argument was presented to the Anderson County, S.C. General Sessions (Criminal) Court. App. 6; trial transcript lines 19-25; see also App. 7; trial transcript line 23 and on Briefing pending in the South Carolina Court of Appeals; therefore, the jurisdiction argument would be a reasonable probable that four members of this court would consider the underlying issue sufficiently meritorious to justify notation of probable jurisdiction under *Ledbetter, id at 1309-11*.

II. THERE IS A SIGNIFICANT POSSIBILITY OF REVERSAL OF THE LOWER COURT’S DECISION

There is a significant possibility of reversal of the lower court’s decision because the *South Carolina Constitution Art. I §19* deprived the Anderson County, S.C. circuit court from imposing a 90-day jail sentence for falling behind on my restitution since restitution is a debt: “*no person shall be imprisoned for debt.*” App. 17. This argument of the circuit court, *id.*, being deprived of jurisdiction under S.C. *Const. Art. I §19* was also Briefed in the South Carolina Court of Appeals. App. 20; accordingly, there is a significant possibility of reversal by the South Carolina Court of Appeal of the circuit court’s 90-day jail sentence for owing a debt under *Ledbetter, id., at 1309-11*.

¹ The possession of stolen vehicle conviction was a 2011 Ford Fusion reported stolen from a Ford Dealership, and possessed b me in South Carolina which crosses State lines from Gerogia to South Carolina. App.

**III. THERE IS A LIKELIHOOD THAT IRREPARABLE HARM WILL
RESULT IF THE LOWER COURT'S DECISION IS NOT STAYED**

There is a likelihood that irreparable harm will result if the lower court decision is not stayed by this court because I'm again behind on my restitution a hearing is scheduled in my case on March 29, 2019 at the Oconee County, S.C. General Sessions (Criminal) Court because I'm \$1,661.78, App. 19-20 behind in restitution which will most certainly put me back in jail; consequently, without a Stay of Probation pending disposition of my pending appeal in the South Carolina Court of Appeals, I will most certainly go to jail on March 29, 2019 for falling behind on my restitution. App. 8; consequently, without this Court Granting my Emergency Stay of Probation, I will suffer irreparable harm by a jail sentence under *Ledbetter, id., at 1309-11*.

CONCLUSION

Based on the foregoing facts, I'm respectfully requesting that this Court Grant this Emergency Application to Stay Probation pending the disposition of my pending Appeal in the South Carolina Court of Appeals, and including any, and all restitution payments, enforcement of any, and all probation requirement by the Oconee County Probation Office in Walhalla, S.C., any other County Office in South Carolina, or the South Carolina Department of Probation, Parole & Pardon Services in Columbia, S.C.

Order any other relief this Court deems just, proper, and/or impartial respectively.

Respectfully Submitted,

s/

George Cleveland III, *Pro se*

400 Hunter Street

Seneca, S.C. 29678

864-784-7223

Email: gcleveland7475@gmail.com

Dated: March 26, 2019

RULE 246
STAY IN CRIMINAL CASES

App. 1

(a) Stays Pending Appeal. 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). Where the sentence exceeds imprisonment for ten (10) years, the defendant may only be admitted to bail by an appellate court. Where the State has taken an appeal, the appeal shall automatically operate as a stay of further proceedings in the lower court.

(b) Stays of Sentences After Affirmance. No stay of any sentence in a criminal case which has been affirmed by the judgment of an appellate court shall be granted, except by order of an appellate court, or a judge or justice thereof, upon motion pursuant to Rule 240.

Amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

South Carolina Appellate Case Management System

Appellate Case No. ...

App. 2

Cases

Case Search

Participant Search

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.

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:	Final Briefing / Record
Consolidated:			
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
03/05/2019	Initial Brief - No Reply	
02/19/2019	Correspondence - Incoming (Copy of Emails between Appellant and Respondent)	
02/19/2019	Designation of Matter - Designation of Matter Filed	
02/19/2019	Initial Brief - Respondent	
01/31/2019	Correspondence - Incoming (Copy of Letter from Respondent to Appellant)	
01/28/2019	Designation of Matter - Designation of Matter Filed	
01/28/2019	Initial Brief - Appellant	
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	
05/06/2018	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	

**Financial
PROBATION CITATION**

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

Citation #: C-37-17-0059

App 3

SOUTH CAROLINA	COUNTY: <u>OCONEE</u>
V.	SID # <u>01068002</u>
GEORGE CLEVELAND III	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 #
Date <u>10/05/2017</u>	<u>Ginger W. Newton - 0343</u>

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</u> <u>2:47pm</u>
	Serving Officer's Signature <u>[Signature]</u>

Sworn to and subscribed before me this

12 day of Oct, 17

Signature of Notary Public [Signature]

My Commission Expires

4/24/2025

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of OCONEE

App. 4

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:

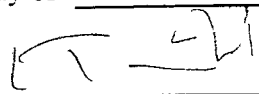
The above named defendant agreed in writing, as a part of his/her probation agreement, to pay a fine, restitution and supervision fees. The defendant has not complied with his/her written agreement. As of the date of this affidavit, the defendant's arrearage and unpaid balance on the agreed payment schedule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

11-24-2025

My Commission Expires:


Affiant

WALHALLA

App. 6

14

Feb 23, 2018 Restitution Violation Hearing

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THE DEFENDANT: I pled guilty with Judge

Miller, 2013. I also pled guilty with Judge Couch
in Oconee County.

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

THE DEFENDANT: Correct.

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

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

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

THE DEFENDANT: That's Judge Miller. Yes.

THE COURT: And you agreed to do that?

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

THE COURT: Okay. All right.

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

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

App. 7
Feb 23, 2018 Restitution Violation Hearing

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

COUNTY OF OCONEE

Indictment No. 12-65-23-07504

App. 8

Probation/ Community Supervision
Program (CSP) Violation
Warrant/Citation # 12-37-18-0098

State of South Carolina,

v.

George Cleveland III

Offender.

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

You are hereby directed to appear at a Probation/CSP Violation Hearing in General Sessions on March 29, 2019 at 9:00 Am in the OCONEE County Courthouse, WALHALLA, South Carolina.

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

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

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

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

Date

2/28/19

Offender's Signature

Agent/OSS Signature

App. 9

[Handwritten signature]

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

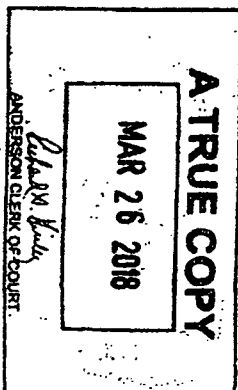
SC Court of Appeals

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

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



App. 10

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

App: 11

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,


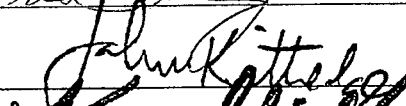

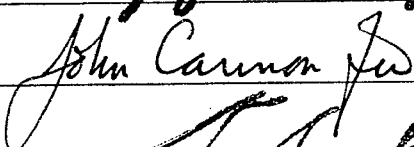
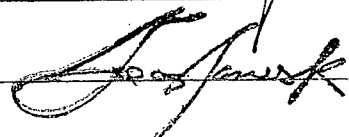
v.

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.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

September 24, 2018

cc:

George Cleveland, III

Matthew C. Buchanan, Esquire

The Honorable Jenny Abbott Kitchings

App. 12 ~~00~~

RECEIVED

MAR 30 2018

SC Court of Appeals

NOTICE OF APPEAL IN GENERAL
SESSIONS COURT

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 #6. (5) 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, RESPONDENTS.

App. 13
APPELLANT'S AMENDED NOTICE
OF APPEAL FROM GENERAL SESSIONS

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; 2012G523 07505;
N201731

ORIGINAL SENTENCE IN GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

GEORGE CLEVELAND, III,

Appellant,
RECEIVED

APR 06 2018

SC Court of Appeals

VS.
SOUTH CAROLINA DEPARTMENT
OF PROBATION, PAROLE, AND PARDON
SERVICES (S.C. D. PRPS) AND SOUTH CAROLINA, RESPONDENTS

App. 14

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

App 15

18 U.S. Code § 2312. Transportation of stolen vehicles

<u>U.S. Code</u>	<u>Notes</u>
------------------	--------------

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.

(June 25, 1948, ch. 645, 62 Stat. 806; Pub. L. 102-519, title I, § 103, Oct. 25, 1992, 106 Stat. 3385; Pub. L. 109-177, title III, § 307(b)(2)(A), Mar. 9, 2006, 120 Stat. 240.)

U.S. Code Toolbox

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made at any time before judgment.

App. 16

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 106, 63 Stat. 104; Pub. L. 98-209, § 10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100-352, § 5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103-337, div. A, title IX, § 924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832.)

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ANDERSON CLERK OF COURT

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.)

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

STATE OF SOUTH CAROLINA

AFFIDAVIT



County of OCONEE

App. 18

Personally appeared before me, Joshua L Sample, who first being duly sworn, deposes and says that GEORGE CLEVELAND III did within this county and State on the 04 day of December, 2018, 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	\$70.00	\$1,661.78	\$350.00	\$0.00
Unpaid Balance	\$267.80	\$12,976.78	\$2,500.00	\$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

04 day of December, 2018

Heather M Barker
Signature of Notary Public

[Signature]
Affiant

4-17-2027

My Commission Expires:

Financial
PROBATION CITATION

App. 19

Citation #: C-37-18-0098

SOUTH CAROLINA

COUNTY: OCONEE

V.

SID # 01068002

GEORGE CLEVELAND III

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 # Joshua L Sample - 0284
Date 12/04/2018	

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 <i>Oconee Probation</i>	Date and Time <i>12-18-18 at 4pm</i>
	Serving Officer's Signature <i>Virginia Jenkins</i>
	day of _____

Sworn to and subscribed before me this _____

Signature of Notary Public

My Commission Expires _____

App. 20

Argument

INITIAL BRIEFING PENDING ~~IN~~ THE SC COURT OF APPEALS

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 states that:

“no person shall be imprisoned for debt.” R.p. _____. Judge McIntosh sentence Appellant Cleveland to 90-days in jail for owe a debt of restitution. The court stated: “I think that you willfully not paid [your restitution].” R.p. _____. “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. _____ 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 not a debt under Ex parte Hollman, id., R.p. _____. 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. _____. Regardless of whether the Jurisdiction issue was argued below, Cotton required this Court to determine whether Art. I § 19 S.C. Const. 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 Restitution is not a debt under Art I § 19 S.C. Const. Therefore, Judge McIntosh did not have Jurisdiction because of the Art. I § 19 S.C. Const. to

App. 21

**APPELLANT'S EMERGENCY MOTION TO STAY PROBATION
DUE TO THE S.C.D.P.P.S. FAILING TO FOLLOW THIS COURT'S ORDER**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-23-0704, 07507

Appellate Case No. 2018-000564

RECEIVED
JUN 11 2018
SC Court of Appeals

GEORGE CLEVELAND, III,Appellant,

v.

THE STATE.....Respondent.

APPELLANT'S EMERGENCY MOTION TO STAY

Matthew C. Buchanan, General Counsel

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

Post Office Box 50666

Columbia, S.C. 29250

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