

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF ISSUE ON APPEAL..... 3

STATEMENT OF FACTS 4

ARGUMENT..... 5

TABLE OF AUTHORITIES

Cases

State v. Gamble, 249 S.C. 605, 155 S.E.2d 916 (1967) 5

State v. Kimbrough, 212 S.C. 348, 46 S.E.2d 273 (1948)..... 5

Statutes

S.C. Code Section 16-15-140 4

S.C. Code Section 23-3-540 4, 5

Constitutional Provisions

Article 1, Section 10, of the South Carolina Constitution 5

Article 1, Section 15, of the South Carolina Constitution 5

STATEMENT OF ISSUE ON APPEAL

Requiring appellant to wear an electronic monitoring device for the balance of his life pursuant to *S.C. Code Section 23-3-540* constitutes cruel and unusual punishment under the facts of his case.

STATEMENT OF FACTS

On February 9, 2004, Reginald Lattimore pleaded guilty, in Lexington County before Judge Marc Westbrook, to an indictment charging him with a non-violent lewd act on a minor (*S.C. Code Section 16-15-140*) and was sentenced to imprisonment for ten years, suspended upon the service of three years and five years of probation. Lattimore was subsequently convicted of driving under suspension and failing to register as a sex offender.

On April 4, 2008, Judge Edward W. Miller held a probation revocation hearing in Greenville County. Lattimore admitted that he had violated the conditions of his probation. ROA p. 3, lines 12-14. He argued, however, that it would be “excessive and harsh” to require him to be monitored for the rest of his life by an electronic monitoring device pursuant to *Section 23-3-540*. ROA p. 7, lines 4-9; ROA p. 11, lines 17-23. The judge found Lattimore in violation of his probation, but continued him on probation and also required mandatory electronic monitoring.

ARGUMENT

Requiring appellant to wear an electronic monitoring device for the balance of his life pursuant to S.C. Code Section 23-3-540 constitutes cruel and unusual punishment under the facts of his case.

As noted, Reginald Lattimore pleaded guilty to performing a non-violent lewd act on a minor and received probation. After he violated the conditions of his probation, the judge required Lattimore to wear an electronic monitoring device for the balance of his life pursuant to *S.C. Code Section 23-3-540*. He overruled Lattimore's objection to the cruel and unusual nature of this punishment.

As does the Federal Constitution, *Article 1, Section 15*, of the *South Carolina Constitution* prohibits the infliction of cruel and unusual punishments.

These provisions are primarily intended to prescribe in inhuman or barbarous treatment. However, conventional punishment may be so grossly disproportionate to the offense committed as to be cruel and unusual in the constitutional sense.

State v. Gamble, 249 S.C. 605, 155 S.E.2d 916, 917 (1967). “[T]he punishment for a crime, while not cruel and unusual in kind, may be so severe as to fall within the meaning of this provision.” *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273, 275 (1948). Our state constitution also proscribes “unreasonable invasions of privacy.” *Article 1, Section 10, South Carolina Constitution*.

Under the facts of Lattimore's case, the requirement of life-long electronic monitoring constitutes cruel and unusual punishment. For this reason, the Court should vacate that provision.

Respectfully submitted,

Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of July, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and 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.”

July 10, 2009

Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGINALD R. LATTIMORE,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGINALD R. LATTIMORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 10th day of July, 2009.

Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of July, 2009.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

July 10, 2009

J. Benjamin Aplin, Esquire
Assistant Chief Legal Counsel
South Carolina Department of
Probation, Parole & Pardon Services
PO Box 50666
Columbia, SC 29250

Re: The State v. Reginald R. Lattimore

Dear Ben:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kms

Enclosure



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

July 10, 2009

Mr. Reginald R. Lattimore,
315 Sunnyglen Drive
Greer, South Carolina 29651

Re: Your appeal

Dear Mr. Lattimore:

Enclosed is a copy of the Final Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kms

Enclosure