

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JUL 17 2023

SC Court of Appeals

APPELLATE CASE NO. 2022-000641

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Judge

Trial Court Case No. 2002-GS-23-09233, 2002-GS-23-09234,

2002-GS-23-09235, 2002-GS-23-09239

STATE OF SOUTH CAROLINA RESPONDENT,

V.

PATRICK LEE BOOKER APPELLANT.

RECORD ON APPEAL

Patrick Lee Booker

103 Rock Knoll Drive

Greenwood, South Carolina 29649

patrickbooker85@gmail.com

APPELLANT, PRO SE

INDEX

SCDPPPS Form 1150 "Community Supervision Program Certificate".....	1
SCDPPPS Notice Letter to Debtor dated October 15, 2021.....	2
Letter of Patrick L. Booker to SCDPPPS dated November 10, 2021.....	3
SCDPPPS Citation to Patrick L. Booker dated April 7, 2022.....	<u>9</u>
Defendant's Memorandum of Law In Opposition to Citation.....	<u>10</u>
Transcript of Probation Hearing dated April 18, 2022.....	<u>16</u>
Order Concerning Supervision Fees dated April 28, 2022.....	<u>30</u>
SCDPPPS Citation to Patrick L. Booker dated July 20, 2022.....	<u>32</u>
Defendant's Return to Citation dated August 15, 2022.....	<u>33</u>
Transcript of Probation Hearing dated August 15, 2022.....	<u>39</u>
Supplemental Order Concerning Supervision Fees dated September 1, 2022..	<u>54</u>
Certificate of Compliance	<u>56</u>



COMMUNITY SUPERVISION PROGRAM CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that the offender mentioned below who was convicted of the offense(s) indicated below on said date(s) and in said county(ies) meets the requirements for Community Supervision Program as provided for in §24-21-560 of the South Carolina Code of Laws 1976, as amended.

It is therefore ORDERED that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below.

This release shall not prevent the delivery of the prisoner to authorities of the Federal Government or any state otherwise entitled to his or her custody.

In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole and Pardon Services is issued on the date below.

By Order of: South Carolina Department of Probation, Parole and Pardon Services

By: [Signature] Director of Pardons, Pardons and Release Services

Offender/Prisoner's Name: BOOKER, PATRICK
Supervision Beginning Date: August 10, 2020
State Identification # (SID): 01412395
SC Dept. of Corrections # (SCDC): 00297590
Supervision Ending Date: June 20, 2022

Table with 8 columns: Offense(s), CDR, Indictment #(s), Conviction Date(s), County of Conviction(s), Incarceration Termination Date, Restitution Ordered (\$), Probation to Follow. Contains two rows of offense data.

Additional Offenses or Notes Page 2

CONDITIONS OF SUPERVISION

Violation of any of these conditions may result in the immediate revocation of supervision.

- 1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent. Please report to the office in the County of: GREENWOOD Phone: (864) 942-8652
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
4. I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.
11. Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

ADDITIONAL CONDITIONS:

- 04 Must have no contact with the Victim and/or Victim's family for duration of supervision.
23 CSP Calculations: Total sentence is 20 years and incarceration start date is 06/25/2002 on all indictments.

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

No signature required due to COVID-19 Pandemic

Offender Signature Address: 103 Rock Knoll Dr, Greenwood, SC 29649, GREENWOOD, USA Phone: (864) 423-1948 Date

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.

See attestation form

Witness Signature Date

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

HENRY MCMASTER
Governor



JERRY B. ADGER
Director

PATRICK LEE BOOKER SID#01412395
103 ROCK KNOLL DR
GREENWOOD SC 29649

Re: Notice Letter to Debtor

October 15, 2021

Dear PATRICK LEE BOOKER:

According to our records, you owe the South Carolina Department of Probation, Parole and Pardon Services a debt in the amount of \$650.00 , for one or more of the following Supervision accounts, Regular, Intensive, YOA, GPS or E-Monitor. You are hereby notified of the South Carolina Department of Probation, Parole and Pardon Services' intention to submit this debt to the South Carolina Department of Revenue for the calendar year 2021 for collection through the Setoff Debt Collection Act if not paid within thirty (30) days from the date of this notice.

The Setoff Debt Collection Act allows the Department of Revenue to deduct, from any refund, this amount plus all costs, including a \$25 administrative fee. If you file a joint return with your spouse, this amount will be deducted from the total joint refund without regard to which spouse incurred the debt or actually withheld the taxes.

The Department of Revenue will utilize the powers granted under Title 12 of the SC Code. You may file a written protest, with the following information, within thirty (30) days from the date of this notice: **your name and address, a valid email address and your social security number, the type of debt in dispute and a detailed statement of all reasons you disagree with the debt amount or dispute that you owe the debt.**

The original written protest must be mailed to the Attention: Offender Account Review and Collections at the South Carolina Department of Probation, Parole and Pardon Services at Post Office Box 207, Columbia, South Carolina 29202.

If you have any questions in regards to this letter, please **contact your probation agent**. If your agency account has been brought up to date, please disregard this letter.

Sincerely,

Setoff Debt/ GEAR Team

cc: CHARLESTON County Probation Office

293 GREYSTONE BOULEVARD, POST OFFICE BOX 207 COLUMBIA, SC 29202
Telephone: (803) 734-9244 Facsimile: (803) 734-9440 (www.dppps.sc.gov/)

To: Matthew Buchanan, General Counsel
Office of General Counsel
South Carolina Department of Probation, Parole and Pardon Services
293 Greystone Boulevard, Columbia, SC 29210

From: Patrick L. Booker [SID#01412395]
103 Rock Knoll Drive
Greenwood, SC 29649
patrickbooker85@gmail.com
(864) 526-8981

Date: November 10, 2021

RE: Community Supervision Program (CSP)

Subject: SCDPPPS Has No Lawful Authority Over Me Currently

Dear Sir/Madam:

On November 5, 2003, I was convicted and sentenced for multiple "no parole offenses" as defined in Section 24-13-100 in the Court of General Sessions for Greenville County before the Honorable Edward Miller who sentenced me to serve a term of twenty (20) years of incarceration and nothing more.

On August 10, 2020, I was released early from prison due to good behavior credits pursuant to a new prison policy and I am being told by employees/agents from your Agency that I am being ORDERED "executively" to enter and complete a Community Supervision Program ("CSP") pursuant to Section 24-21-560 of S.C. Code of Laws.

The purpose of this correspondence is to formally deny that your Agency possesses any authority over me or my person including all persons similarly situated to me, and to inform you of the reason(s) for such denial of authority, with the request that you promptly consult and advise the responsible official(s) of their lack of authority over me including all persons similarly

situated to me and of their potential civil liability for the unconstitutional deprivation of my/our liberty.

The pertinent language of section 24-21-560(A) reads as follows: “**any sentence for a ‘no parole offense’ must include any term of incarceration and completion of a community supervision program** operated by the Department of Probation, Parole, and Pardon services.” (emphasis not in original). Here, operative language is: “**any sentence must include any term of incarceration and completion of a community supervision program**”.

In the above-quoted language, the lawmakers of South Carolina made it clear that a sentence must **include** imposition of CSP. A review of the Trial Transcript and the Order of Commitment/Sentence Sheet for me (including all persons similarly situated to me) reveals that the sentencing judge sentenced me/us to serve only a term of incarceration: my/our sentence--*as entered upon the records of the Court*-- does not **include** any Order or instruction for me/us to enter and complete the community supervision program.

The fact that my/our sentence—*as entered upon the records of the Court*-- does not include an Order or instruction for me/us to enter and complete CSP is **material** because, as explained by now-U.S. Supreme Court Associate Justice Sonia Sotomayor in the matter of Earley v. Maury, “**the only sentence known to the law is the sentence or judgment entered upon the records of the court** []”, 451 F.3d 71 (2nd Cir.2006). The Earley court explained that “**only the judgment of a court, as expressed through the sentence imposed by a judge, has the power to constrain a person’s liberty.**” *Id.*

In my/our case, neither the court nor the judge of that court pronounced or imposed CSP upon me/us as part of my/our sentence—*as entered upon the records of the Court*. This is an adjudicative fact for which **JUDICIAL NOTICE** is hereby requested to be taken by any judge considering this matter.

Instead, it is Jerry B. Adger, the director of the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS)—an administrator within the Executive branch of government, who has purportedly imposed CSP upon me/us, by and through SCDPPPS Form 1150 [**COMMUNITY SUPERVISION PROGRAM CERTIFICATE**] which reads, in relevant part, as follow:

“Know all men by these presents:

*It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES that the offender, [BOOKER PATRICK] who was convicted of the offense(s) [Armed Robbery and Carjacking] on November 5,2003 in Greenville County meets the requirements for Community Supervision Program as provided for in section 24-21-560 of the South Carolina Code of Laws 1976, as amended. It is therefore **ORDERED** that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below. This release*

shall not prevent the delivery of the prisoner to authorities of the Federal Government, or any state otherwise entitled to his or her custody. In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole, and Pardon Services is issued on the date below.

By **Order of South Carolina Department of Probation, Parole and Pardon Services---BY DIRECTOR OF PAROLES, PARDONS AND RELEASE SERVICES**".

This "**Community Supervision Program Certificate**" (i.e., SCDPPPS Form 1150) contains and indeed constitutes an executive **Order** that I/we enter complete CSP.

As an administrator within the **EXECUTIVE BRANCH** of government, the SCDPPPS Director does not possess the power or the authority to alter the terms of my/our sentence, or any other sentence imposed by the **JUDICIAL BRANCH** of government. See Earley, supra ("The judgment of the court establishes the defendant's sentence, and that sentence may not be increased by an administrator's amendment. The only cognizable sentence is the one imposed by the judge. Any alteration to that sentence, unless made by a judge in a subsequent proceeding, is of no effect.").

Perhaps you may believe that the CSP is necessarily included within my/our sentence by operation of law because it is statutorily mandated. That, however, is not so and that proposition was specifically rejected by the **Honorable Sonia Sotomayor** in both Earley I and Earley II. See, e.g., Earley II, 462 F.3d at 149 ("When the sentence as imposed by the sentencing judge is purportedly altered to reflect something other than the sentence imposed, the source of that alteration is immaterial. Whether it is DOCS administrators or the operation of New York law that works the alteration, the alteration is of no effect. **The fact that [statutory law] mandates a different sentence than the one imposed may render the sentence imposed unlawful, but it does not change it. The sentence imposed remains the sentence to be served unless and until it is lawfully modified.**")

By "**administratively imposing**" (via SCDPPPS Form 1150) and enforcing conditions of supervision on me/us following my/our release from prison, despite the absence of any **judicial Order** for such supervision by the court which sentenced me/us for my/our crimes, the SCDPPPS Director and the agents/employees of your agency are acting in violation of my/our due process rights, See Vincent v. Yelich, 718 F.3d 157 (2013); and Betances v. Fischer, 403 F.Supp. 3d 212 (2019).

Furthermore, by "**administratively imposing**" (via SCDPPPS Form 1150) and enforcing conditions of supervision on me/us following my/our release from prison, despite the absence of any **judicial Order** for such supervision by the court which sentenced me/us, the SCDPPPS Director and the agents/employees of your agency are acting in violation of the separation of powers clause. To be clear, the statute in question (S.C. Code of Law, Section 24-21-560) is not being challenged here. In addition to my afore-stated claim of a violation of my/our due process rights, I am claiming also that the **SCDPPPS Form 1150/executive Order** violates the separation of powers doctrine because it purports to perform an inherently judicial function (i.e.,

the Ordering by an Executive official for me/us to enter and complete the CSP as a component of my/our sentence.)

For the sake of academia, suppose a circuit judge were to pronounce and impose a term of five (5) years imprisonment as the sentence of a defendant convicted of the offense of Murder in this state. Although the statute for the offense of murder in this state mandates a sentence of at least thirty (30) years imprisonment, the judge's imposition of a five-year period of imprisonment is controlling, however erroneous or unlawful, unless and until corrected in a subsequent proceeding. If the prison director were to consult the statute for murder and read it to mean that the prisoner must be imprisoned for at least thirty years (which is the law) and, on that basis, refuse to release the prisoner at the end of his service of five years imprisonment, that administrator would certainly violate the prisoner's due process rights because the administrator would have **altered** the terms of the sentence *as imposed by the judge*. That is exactly what the administrator of the SCDPPPS has done in my/our case: **he has altered the terms of my/our sentence as imposed by the judge by Ordering me/us to enter and complete a term of community supervision program**, despite there being no inclusion in my/our sentence—*as entered upon the records of the court*-- for me/us to enter and complete CSP. The language of the statute is clear and unambiguous in that any sentence must "include" completion of a community supervision program; the only official authorized to include anything in a sentence is a judge; and the only way to "include" anything in a sentence is to pronounce and thereby impose the thing: that means that the sentencing authority must "pronounce and impose" an order for the completion of a CSP.

Because the court which issued my/our sentence pronounced and imposed only a term of incarceration and nothing more, the SCDPPPS or its agents/employees does not possess any authority or jurisdiction over my person, or over any person similarly situated to me. Simply put, your Agency possesses no lawful power or authority over me/us because I/we have never **ORDERED** by a judge of competent jurisdiction to enter and complete the program which your Agency administer and operate.

PLEASE TAKE NOTICE that I was lawfully released early from the South Carolina Department of Corrections on August 10, 2020, after having served more than eighty-five percent of the actual term of imprisonment imposed. See, S.C. Code of Laws, Section 24-13-150(A) ("Notwithstanding any other provision of law, an inmate convicted of a "no parole offense" as defined in section 24-13-100 and sentenced to the custody of the Department of Corrections...is not eligible for early release..., until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed."). Accordingly, the fact that your agency has no authority over me does not mean that I must be returned to the Department of Corrections to complete service of my sentence. Indeed, service of my sentence is complete. To be clear, while imprisoned I lawfully earned good conduct credits pursuant to state law which entitled me to receive a deduction from the term of my sentence computed at the rate of three days per month. Based upon the total amount of time I served in prison coupled with the total amount of good conduct credit I earned while in prison, service of my sentence is complete and I was discharged- by operation of law -from my sentence on August 10,2020, upon my release from

prison. S.C. Code of Laws, Section 24-13-210(B)(“An inmate convicted of a “no parole offense” against this State as defined in Section 24-13-100 and sentenced to the custody of the Department Of Corrections, ...,whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of three days for each month served.”).

On August 10,2020, the Department of Corrections lawfully released me from prison due to the restoration of my good conduct credits which I earned over the years, pursuant to its new prison policy SCDC Policy OP-22.57, “**RESTORATION OF LOST GOOD TIME**”.

Because it is an unlawful alteration of the terms of my/our sentence for the SCDPPPS Director to order me/us to enter and complete the CSP without judicial pronouncement and imposition of CSP as part of my/our sentence, I will not voluntarily submit to any claim of supervision over my person by any agent or employee of your agency at this time.

Accordingly, I respectfully request that you take appropriate action in prompt fashion to ensure that SCDPPPS agents/employees immediately cease and disclaim any supervisory authority over me including all persons similarly situated to me, unless and until I am/we are lawfully sentenced to enter and complete the CSP by a court of competent jurisdiction. And I request you to immediately advise the Setoff Debt/GEAR Team not to submit any claim of debt to the Department of Revenue inasmuch as it relates to me, or to any person similarly situated to me, as your Agency had/has no lawful authority over me/us.

Thank you kindly,

Patrick L. Booker

CC: My File:

Office of the General Counsel for

South Carolina Department of Corrections:

Office of the Attorney General for the

State of South Carolina:

CHARLESTON County Probation Office (ATTN: Heather Evans);

Offender Account Review and Collections.

CITATION

No. C-24-22-0032

SOUTH CAROLINA V. PATRICK LEE BOOKER	County GREENWOOD	
	SCDC # 00297590	SID # 01412395
	Citation for Violation of <input type="checkbox"/> Parole <input type="checkbox"/> Emergency Powers Act Release <input type="checkbox"/> Supervised Re-entry Program <input checked="" type="checkbox"/> Community Supervision <input type="checkbox"/> Supervised Furlough	

TO: PATRICK LEE BOOKER

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

Place Greenwood County Court House	Room
	Date 4/18/2022
	Time 9:00 AM

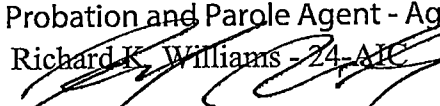
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged
 The offender has knowingly and willfully violated conditions 10 as proscribed by the Department. Due to the violation of said conditions the offender is subject to the issuance of an arrest warrant or citation pursuant to Section 24-21-560 of the South Carolina Code of Laws.

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

List of Rights:
 You have the right at the preliminary 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 at the hearing at your expense. An attorney may be appointed to represent you in extraordinary circumstances. 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.


GREENWOOD, South Carolina	Probation and Parole Agent - Agent # Richard K. Williams - 24-AIC
Date 4/6/2022	

PROOF OF SERVICE

Date Served: 4/7/22	Place:
Served On: (Print Name) Patrick Booker	
Served By: (Print Name) Jacob Buch	Title: Agent

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct

Executed on: 4/7/22 DATE	 Signature of Server
-----------------------------	--

Address of Server 600 Monument St Room	City Greenwood	State SC	Zip 29646
---	-------------------	-------------	--------------

STATE OF SOUTH CAROLINA |
COUNTY OF GREENWOOD |

IN THE COURT OF GENERAL SESSIONS

INDICTMENT No. 02-GS-23-09233;
02-GS-23-09234; 02-GS-23-009935;
02-GS-23-09239.

State of South Carolina, |

PLAINTIFF, |

Vs. |

DEFENDANT'S MEMORANDUM OF LAW

IN OPPOSITION TO PLAINTIFF'S

Patrick L. Booker, |

CITATION

DEFENDANT. |

COMES NOW the above-named Defendant, Patrick L. Booker, who, proceeding pro se, hereby submit this memorandum of law in opposition to the Plaintiff's "CITATION" dated April 6, 2022, which charges that Defendant violated conditions of supervision.

PRELIMINARY STATEMENT

I DO NOT OWE, NOR WILL I PAY, ANY SUPERVISION FEES. And that is because of the following:

I was never informed nor advised by the trial court, prior to its acceptance of my guilty plea, that I would be required by state law to complete a mandatory supervision term AFTER my period of incarceration. The failure of the trial court to advise me of the mandatory supervision requirement before accepting my guilty plea deprived me of due process of law, rendering my guilty plea null and void.

The Supreme Court of the United States has previously "*granted certiorari to consider whether, when a state law provides for a mandatory [supervision] term at the end of a prisoner's period of incarceration and when the trial judge accepts a plea of guilty without informing the defendant that that is part of the sentence that will be imposed, that is the mandatory [supervision] term, has*

there been a violation of due process for which the prisoner may obtain...relief?" Lane v. Williams, 455 US 624 (1982).

In that case the Supreme Court was unable, however, to reach the merits of the matter because the case became moot, as the defendants challenged only a component of the sentence instead of attacking the guilty plea itself as being void for lack of due process. *Id.*

Because I hereby challenge my guilty plea as being void for lack of due process based upon the failure of the trial court to inform me of the mandatory supervision term, the Supreme Court of the United States may decide to grant certiorari once again (as it did in the matter of **Lane v. Williams**) in order to consider whether there has been a violation of due process when a state law provides for a mandatory supervision term at the end of a prisoner's period of incarceration and the trial judge accepts a plea of guilty without informing the defendant that that—the mandatory supervision term—is part of the sentence that will be imposed.

As an alternative argument, I hereby challenge the authority of an administrator within the executive branch to administratively add the mandatory supervision term to my sentence.

I hereby inform this Court that my legal position, as set forth in detail below, is based entirely on clearly established federal law, as determined by the United States Supreme Court, and as articulated by the Honorable Sonia Sotomayor.

Thus, I beseech this Court to give the matter set forth below thorough consideration and to take the same **UNDER ADVISEMENT** prior to deciding the matter. Moreover, I respectfully request that this Honorable Court enter an Order or Judgment which includes the Court's findings of fact and conclusions of law with respect to each issue presented to, heard and addressed by this Court.

STATEMENT OF THE CASE

On November 5, 2003, I entered a guilty plea on the above-captioned indictments in the Court of General Sessions for Greenville County before the Honorable Edward Miller who sentenced me to serve a term of twenty (20) years of imprisonment. Before accepting the guilty plea, Judge Miller advised me of both the nature of the charges against me and the constitutional rights that I

would waive by pleading guilty. After the solicitor established a factual basis for the plea, I indicated that I understood my rights and wished to plead guilty.

At the time that I pleaded guilty, South Carolina law required every sentence for certain felonies, including armed robbery, to include a term of mandatory supervision in addition to the term of imprisonment. See, S.C. Code of Laws, Section 24-21-560("Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a "no parole offense" as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services.").

During the guilty plea acceptance, neither the trial judge, the solicitor, nor defense counsel informed me that my sentence included a mandatory supervision term.

On August 10, 2020, after having served more than eighteen (18) years of imprisonment, I was released from the South Carolina Department of Corrections ("SCDC"). The prison authorities who released me provide me a copy of SCDPPPS Form 1150 "**COMMUNITY SUPERVISION PROGRAM CERTIFICATE**" which provides, in relevant part, as follows:

"Know all men by these presents: It having been made to appear

to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that the offender [BOOKER, PATRICK] who was convicted of [Armed Robbery and Car Jacking] on November 5, 2003, in Greenville County meets the requirements for Community Supervision Program as provided for in section 24-21-560 of the South Carolina Code of Laws 1976 as amended. It is therefore **ORDERED** that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below. This release shall not prevent the delivery of the prisoner to the authorities of the Federal Government, or any state otherwise entitled to his or her custody. In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole, and Pardon Services is issued on the date below. By Order of the South Carolina Department of Probation, Parole and Pardon Services---BY
DIRECTOR OF PAROLES, PARDONS AND RELEASE SERVICES."

Clearly the afore-mentioned **COMMUNITY SUPERVISION PROGRAM CERTIFICATE** (SCDPPPS Form 1150) constitutes an administrative order that I enter and complete the CSP at the end of my active sentence.

Because of the legal reasons set forth below, I ignored the afore-mentioned administrative order and thus I have not complied with any of the Conditions of Supervision purportedly imposed on me by the SCDPPPS including, but not limited to, refusing and failing to pay any supervision fees.

Thus, the State has issued the present **CITATION** (charging me with violating conditions of supervision) for which the Court is now considering and for which I submit the following arguments.

ARGUMENTS

TRIAL COURT'S FAILURE TO INFORM DEFENDANT OF MANDATORY SUPERVISION REQUIREMENT BEFORE ACCEPTING GUILTY PLEA RENDERED PLEA NULL AND VOID FOR LACK OF DUE PROCESS.

The Supreme Court of the United States has made it clear that a guilty plea must be made “by one fully aware of the direct consequences” of that plea. Brady v. United States, 397 U.S. 742 (1970)

I hereby submit and contend that the Community Supervision Program (CSP) required by the provisions of South Carolina law is indeed a “direct consequence” of a guilty plea and that a trial judge accepting a guilty plea must inform a defendant of the CSP prior to acceptance of such plea, for the plea to comport with the requirements of Due Process of Law.

In Jackson v. State the Supreme Court of South Carolina “**granted certiorari to determine whether participation in a ‘community supervision program’ (Program) as defined in S.C. Code Ann. Section 24-13-100 (Supp.2001) is a collateral consequence of sentencing.**” In a per curiam opinion the Jackson court held that the CSP is merely a collateral consequence of sentencing for which a defendant need not be informed of prior to pleading guilty.

I submit and contend that the per curiam opinion in Jackson is not merely erroneous, but it is also an extreme outlier from a robust consensus of persuasive authority clearly recognizing that a mandatory post-release supervision term is a direct consequence of a guilty plea for which a criminal defendant must be made aware prior to a court's acceptance of the defendant's plea.

To illustrate just how erroneous that the Jackson opinion is, consider this: Nothing in S.C. Code Ann., Section 24-13-100 defines the community supervision program. Indeed, the community supervision program is not mentioned anywhere in that section. Yet the per curiam opinion states:

“We granted certiorari to determine whether participation in a ‘community supervision program’(Program) **as defined in S.C. Code Ann. Section 24-13-100 (Supp.2001)** is a collateral consequence of sentencing.”

Id.

That was a mistake by the South Carolina Supreme Court: section 24-13-100 does not define or even mention the community supervision program. But the Jackson court's mistake or error does end there. The Jackson court went on to error in two additional aspects:

- (1) In failing to apply the correct legal standard in resolving the question of whether participation in the Program is a direct or collateral consequence of a guilty plea; and
- (2) In failing to recognize that the crucial difference and distinction between regular parole and the Program.

This case will provide the Supreme Court with the opportunity to re-examine its erroneous decision in Jackson v. State and with the opportunity to address the very issue that the Supreme Court of the United States has previously granted certiorari to consider: whether when a state law provides for a mandatory supervision term at the end of a prisoner's period of incarceration and when the trial judge accepts a plea of guilty without informing the defendant that that is part of

the sentence that will be imposed, that is the mandatory supervision term, has there been a violation of due process?

s/ _____

Patrick L. Booker

STATE OF SOUTH CAROLINA

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)

-v-)

PATRICK BOOKER,)

DEFENDANT.)
_____)

PROBATION HEARING

TRANSCRIPT OF RECORD

APRIL 18, 2022
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

DEFENDANT: PATRICK BOOKER, APPEARED PRO SE

FOR THE SCDPPPS: AGENT RICHIE WILLIAMS

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
HEARING	3
CERTIFICATE OF REPORTER	14

(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 THE COURT: I have paperwork on Mr. Booker.

2 AGENT WILLIAMS: Yes, sir. Mr. Booker was placed on
3 community supervision. He was released August 10, 2020.
4 His end date is June 20, 2022. He had three armed robberies
5 and an attempt to take a vehicle. We are here purely for
6 financial reasons. Mr. Booker has not paid anything
7 whatsoever on his supervision fees. We feel it's a willful
8 violation, because Mr. Booker has been working. He just
9 does not feel he has to pay it because of the Community
10 Supervision Order.

11 The problem with Mr. Booker's case is that he's not
12 eligible for administrative monitoring because of how old
13 the case is, and it is supposed to end in two months and he
14 still owes an outstanding balance of \$1,150 for supervision
15 fees. I understand Mr. Booker does not think that he should
16 have to pay the fees on the community supervision, but
17 according to Statute 24-21-80, "An adult placed on
18 probation, parole, or community supervision shall pay a
19 regular supervision fee towards off setting the cost of his
20 supervision for so long as he remains under supervision.
21 The regular supervision fee must be determined by the
22 Department of Probation, Parole, and Pardon Services based
23 on the ability of the person to pay. It must be not less
24 than \$20 or not more than \$100 per month."
25 That's where we're at here. Again, it's purely

1 financial. I mean, other than that -- he agrees that being
2 on community supervision is lawful, but he just doesn't
3 agree with the paying part.

4 MR. BOOKER: No, sir. That's not my position.

5 THE COURT: What is your position.

6 AGENT WILLIAMS: Excuse me. I thought that's what you
7 said.

8 MR. BOOKER: When I get a chance to speak I will set
9 forth my position.

10 THE COURT: By all means, let me hear from you.

11 MR. BOOKER: May it please the Court. Yes, sir. Just
12 to let the Court know, I do have the ability to pay all the
13 fees, but with all due respect, and this is not being
14 facetious or anything, I'm not going to pay it. Because I'd
15 like to be able to have an order so I can be able to appeal
16 this matter. I challenge the authority of me being on
17 probation itself. Because, based on the case law that I'm
18 basing everything on and that is clearly established by the
19 South Carolina Supreme Court, and is articulated by
20 Sotomayer in a case called *Early v Murray*. The same thing
21 happened, same factual predicate, which is that the illegal
22 principal is that only a judge can impose any terms of the
23 sentence.

24 Now, it may seem like that statute would apply by
25 operation of law, but that position has been clearly

1 rejected. They said that an administrative agency does not
2 have the power to alter the terms of the sentence. So, in
3 this instance right here, Your Honor, the community
4 supervision program certificate that sits at the top of all
5 these conditions says that's the authority that they have
6 over me from this order, but this order is signed by none
7 other than the director of the Department of Probation
8 Parole and Pardon Services. So, that is an administrative
9 order. It's not a judicial order.

10 There is nothing -- according to the United States
11 Supreme Court, the only sentence known to law is the one
12 entered upon the records of the Court by the judge who
13 imposed it. And to correct it, in direct proceeding, it
14 says what it says. In my sentence, it says clearly that the
15 State of South Carolina is authorized to incarcerate me for
16 twenty years and nothing more. It didn't include a
17 provision for me to complete this program. No circuit judge
18 in this state has ever did that in this state, because it
19 hasn't been put on notice of what's going on.

20 This happened in another circuit, the Second Judicial
21 Circuit of New York. What was going on was when those guys
22 got out of prison they had five years, automatically added
23 to their sentences by the Department of Probation and Parole
24 Services up there. They challenged it saying the judge
25 didn't sentence me to this. They said even though the law

1 says this, and the law in this case does say that my type of
2 sentence, a sentence for a no parole offense -- which is
3 armed robbery, car jacking -- a sentence for a no parole
4 offense must include completion of a community supervision
5 program. The thing of it is, when it says, "any sentence
6 must include", the only authority who can impose or include
7 anything in the sentence is a judge. Since Judge Miller is
8 the one who sentenced me in my case, almost 20 years ago in
9 Greenville County, the records on the court does not show
10 anything about no community supervision. So, my legal
11 position is that because I was never informed of it, it
12 would be a complete violation of my due process rights for
13 me to be subjected to something that I was never informed of
14 by the court that sentenced me, because I didn't have a
15 chance to appeal it or challenge it.

16 I get told at the end of my sentence, after I done got
17 out of prison, that I'm on another custodial term for up to
18 two years, and that's what the law actually says. So, in
19 order for me to be able to appeal that, so I can challenge
20 my guilty plea as being involuntary, I'm going to not pay
21 anything which forces them to bring a proceeding against me
22 for failing to pay, which puts you in a position to make a
23 decision on whether or not I've got to pay or not. If you
24 do say I've got to pay, which is fine, I get to appeal that.
25 Then I get to let the higher courts make a decision on

1 whether or not I'm right on my legal position.

2 So, I hearby submit and want to file and add to the
3 record my Memorandum of Law in Opposition to the Plaintiff's
4 Citation, therefore the Court may be able to take this under
5 its consideration. I'm going to serve a copy...

6 THE COURT: Sure. Would you hand that to the Clerk
7 then and let me take a look at it.

8 MR. BOOKER: Again, Your Honor, I'm not -- I've been
9 very cooperative with these individuals the whole time, even
10 though they continue to call my phone. I was cordial with
11 them. I was telling them -- I sent this to general counsel.
12 In fact, I sent my legal position to general counsel, and so
13 they should have -- I sent it to the Attorney General's
14 Office of general counsel. I sent it to all of them.

15 AGENT WILLIAMS: Your Honor, the only ---

16 MR. BOOKER: -- one last thing. Judge Addy, I don't
17 know if you recall, but I've been in front of you before. I
18 think that you are a very fair judge. I just want you to be
19 on the right side of the historical law on this, because I'm
20 going to take it all the way to the top. I'm going to take
21 it as far as I can take it, and because it's based on
22 clearly established law as set forth by Sotomayer. I just
23 want you to review the matter first before you make a
24 decision, so when the order comes down you'll be on the
25 right side of the equation.

1 THE COURT: I do understand your position. Mr.
2 Williams, did you want to say something?

3 AGENT WILLIAMS: Yes, sir. Lastly, the Statute 24-21-
4 560(a, "Any sentence for a no parole offense as defined in
5 Section 24-13-100 must include any term of incarceration and
6 completion of community supervision." That's the authority
7 for him being -- that he does not dispute -- for him to be
8 on supervision, but then 24-21-560(b), "The individual terms
9 of the condition of the prisoner's participation shall be at
10 the discretion of the Department based upon guidelines of
11 the director."

12 MR. BOOKER: Right, and I don't -- everything that's
13 going on right now, the fact that I'm supposed to be on
14 probation is not disputed. Let the record be clear. I
15 don't dispute that I'm supposed to be on community
16 supervision, according to what the actual law says. I just
17 dispute that the process in which I'm on it or how it was
18 imposed is unlawful. I'm saying that the order that placed
19 me on it is not a judicial order. It's an administrative
20 order. There's case law on it binding -- all of it is
21 binding case law -- that says that in this instance when
22 this happens if -- and they gave an example. They said that
23 if a judge was to impose an erroneous sentence, no matter
24 that sentence being erroneous, it's controlling until
25 corrected in a subsequent proceeding.

1 So, in this case, there was an omission of the judge to
2 include a statutory element in my case. He was supposed to
3 include the term of my incarceration and an order for the
4 completion of the community supervision program. Then I
5 would have no dispute, but now I'm in a situation where
6 we've got the director from an administrative agency
7 imposing an order that alters the terms of my sentence. It
8 alters it in the sense that it causes me to do something
9 more than what the judge who sentenced me said I had to do.
10 My position is set forth more clearly, this position I just
11 told you on record is set forth more clearly in the letter
12 that I wrote general counsel.

13 That first Memorandum of Law is my position about the
14 fact that my guilty plea would be involuntary due to the
15 fact of lack of due process. That's a challenge I'm going
16 to make to the Supreme Court. But the position I'm making
17 today that I don't believe I have to pay, because I believe
18 that the underlying order that puts me on probation, that
19 underlying order, is unlawful for two reasons. First reason
20 is the director doesn't have the power to alter the
21 sentence. The second reason is that it violates the
22 separation of powers clause, because this administrator
23 within the executive branch of government has issued an
24 order that performs an inherently judicial function.
25 Because it actually -- in this order when you see it, it

1 actually mentions the sentence. It is clearly an order and
2 it mentions the sentence. It says, "It is therefore ordered
3 that the said prisoner enter the community supervision
4 program at the end of his or her active sentence." So, this
5 clearly is an order and it clearly alters the terms of my
6 sentence by adding something to my sentence that was never
7 in my sentence on the records of the court. That's all.
8 That's what my position is.

9 My position is, for the record, for the Supreme Court
10 for the Court of Appeals, my position is that the Community
11 Supervision Program is a direct consequence of sentencing
12 for which the Defendant must be informed of prior to
13 pleading guilty in order for him to make an intelligent and
14 valid guilty plea. Had I known that I had to serve all that
15 time then get out and serve more time under community
16 supervision I would not have pled guilty. That's what my
17 position is.

18 THE COURT: Just so that the record is clear, it
19 appears that the indictments that you pled guilty to
20 originated out of Greenville County. From the paperwork
21 that I have been provided by probation it looks like the
22 case arose twenty years ago, roughly. How much time did you
23 actively do on these?

24 MR. BOOKER: Over eighteen.

25 THE COURT: Eighteen years, okay.

1 MR. BOOKER: Yes, sir.

2 THE COURT: You are working now?

3 MR. BOOZER: Yes, sir. I work at Sterilite
4 Cooperation.

5 THE COURT: Sterilite? Okay. You're making pretty
6 decent money?

7 MR. BOOKER: Almost \$50,000 a year, sir.

8 THE COURT: Excellent.

9 MR. BOOZER: I can reach in my pocket right now and pay
10 it. I can swipe the card five times, five different ways.
11 And with all due respect, I won't swipe it one time.

12 THE COURT: You probably shouldn't admit that in
13 General Sessions Court where you've got people who might --
14 I don't know.

15 MR. BOOZER: Well, I'm saying that for the record,
16 because I'm relying on the rule of law in this particular
17 case right here.

18 THE COURT: Here's the situation, Mr. Booker. I've
19 read your motion. You've asked that I take this under
20 advisement. My understanding of the law is that community
21 supervision is what they categorize as a collateral
22 consequence of a conviction. I understand your position
23 that that's an erroneous finding by the Supreme Court, but
24 what I'm going to do is double check my thinking on this.
25 If memory serves me, community supervision did predate your

1 incarceration. The passage of that act did predate when you
2 went to prison, but I just want to double check that.

3 MR. BOOKER: It did.

4 THE COURT: What I'll do is issue a very brief order.
5 The order may very well, Mr. Booker, say that you have an
6 obligation to pay this money. If that is the Court's order,
7 obviously you'll be entitled to appeal that. In terms of
8 him coming off community supervision, what the order may
9 well provide for, so that you're not continually monitoring
10 him, but what the order may provide for assuming he
11 completes it successfully two months from now I may simply
12 require him to deposit any outstanding supervision fees with
13 the Clerk of Court while he pursues any appeal, if he
14 chooses to do that. Let me take a look at the law and I'll
15 have an order to you guys in the coming days.

16 Mr. Booker, the address that you have on the letter
17 that you wrote to the director of PPP, is that a correct
18 address?

19 MR. BOOKER: Yes, sir. That's my current address.

20 THE COURT: 103 Rock Knoll Drive?

21 MR. BOOKER: Yes, sir.

22 THE COURT: All right. I'll copy you. I see this
23 email. I assume that it's still a valid email too?

24 MR. BOOKER: Yes, sir.

25 THE COURT: I'll copy you by regular mail and send a

1 courtesy copy by email once I finalize it today. You've
2 heard what I said. I just want to double check my thinking
3 on these things.

4 MR. BOOKER: Very well. If it's possible, Your Honor,
5 can I ask you one question?

6 THE COURT: Yes, sir.

7 MR. BOOZER: Could you please -- I had asked at the
8 bottom, when I sought for the Court to take it under
9 advisement I said that if you could just include findings of
10 fact, inclusion of the law if you could, because what that
11 does -- once I get a ruling on the merits, that means the
12 court can review it on the merits and we can resolve this
13 whole matter where this will never happen again for any
14 potential defendant in the future.

15 THE COURT: I understand. I understand. I will take
16 care of it. I understand procedurally what you're looking
17 at doing and I wish you luck with it, sir.

18 MR. BOOKER: Very well. Thank you so much, Judge Addy.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD***

20

21

22

23

24

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth 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 evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 18th day of April, 2022.

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



Tara T. Scott, CVR

Official Court Reporter

July 14, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 02-GS-23-00935, 9233
9234, 9239

STATE of SOUTH
CAROLINA,

-v-

PATRICK LEE
BOOKER,
Defendant.

ORDER CONCERNING COMMUNITY
SUPERVISION FEES

22 MAY 2 PM 2:30
Paul Winkensmaier COC BULL SC

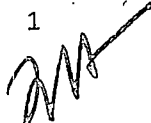
Addy, J.

THIS MATTER CAME BEFORE THE COURT on April 18, 2022 on a probation violation. Mr. Booker appeared *pro se* and Agent Richard K. Williams was present on behalf of the Department of Probation, Pardon, and Parole (hereinafter "PPP"). Having considered the applicable law, the argument of both parties, and the particular facts of this case, the Court finds as follows.

On November 5, 2003, Mr. Booker pled guilty to three (3) counts of Armed Robbery and one (1) count of Taking or Attempting to Take a Vehicle from a Person by Force Without Great Bodily Harm. Judge Edward Miller presided over the plea and sentenced Mr. Booker to the South Carolina Department of Corrections (SCDC) for a term of twenty (20) years imprisonment. Mr. Booker subsequently served his active sentence, was released from SCDC on August 10, 2020, and was placed on Community Supervision by PPP pursuant to Section 24-21-560 of the South Carolina Code of Laws 1976 as amended.

At the violation hearing, Mr. Williams informed the Court that Mr. Booker's only failure under Community Supervision related to payment of supervision fees. At the time of the violation report, Mr. Booker was in arrears \$970.00 despite his gainful employment at Sterilite and, by Mr. Booker's own admission, was fully able to pay the monetary obligation. Mr. Booker argued that, at the time of his guilty plea in 2003, the trial court did not inform him of the mandatory supervision requirement before

Pg. 30

1


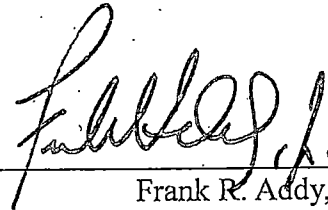
Prob.
at.

accepting the plea which rendered his placement on Community Supervision null and void for lack of due process.

The Court finds that the imposition of Community Supervision, and the accompanying fees to pay for Mr. Booker's supervision under that program, is a collateral consequence of sentencing and, therefore, the ex post facto provision of the Federal and South Carolina Constitutions is not implicated. See Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002). Therefore, the Court finds the plea was not taken in violation of Mr. Booker's due process rights, and he shall be required to pay the supervision fees associated with his supervision under the Community Supervision Program.

Mr. Booker's community supervision is scheduled to end on June 6, 2022. Should Mr. Booker take this issue up on appeal, he shall be required to deposit his outstanding supervision fee balance as of the date he completes supervision with the Clerk of Court pending the resolution of an appeal. In this way, his case may be closed, and he may be discharged from supervision without affecting the justiciability of his appeal.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge

April 28, 2022
Greenwood, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF [COUNTY])

IN THE COURT OF GENERAL SESSIONS

Indictment No. 02-GS-23-00935, **02-65-23-09233,**
09239, & 09234

**Probation/ Community Supervision
Program (CSP) Violation
Warrant/Citation # C-24-22-0032**

State of South Carolina,)
)
v.)
)
Patrick Booker,)
)
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 August 15, 2022 a 9:00 am / pm in GREENWOOD County Courthouse, GREENWOOD, 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 GREENWOOD 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.

7/20/22
Date

Patrick Booker
Offender=s Signature

[Signature]
Agent/OSS Signature

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF GENERAL SESSIONS
IN THE 8th JUDICIAL CIRCUIT
Indictment Number 02-GS-23-00935, 02-GS-23-
09233, 09239, AND 09234

STATE OF SOUTH CAROLINA
VS.
PATRICK LEE BOOKER

Defendant's RETURN TO CITATION

NOW COMES the Defendant, **PATRICK LEE BOOKER**, in formal reply and return to the Citation dated July 20, 2022, issued by the State of South Carolina via SCDPPPS Agent Richard Williams and served upon Defendant.

BACKGROUND/FACTS

At a hearing held on April 18, 2022, Agent Williams stated to the Court: "**Mr. Booker was placed on community supervision.**" Agent Williams did not inform the Court **who** placed Defendant Booker on community supervision.

The judge who imposed sentence on the above-captioned indictments **did not** place Defendant Booker on community supervision.

Defendant Booker was placed on community supervision (i.e., probation) by the Director of South Carolina Department of Probation, Parole, and Pardon Services ("SCDPPPS"). See

SCDPPPS Form 1150, "Community Supervision Program Certificate", dated August 10, 2020, attached hereto and incorporated herein by reference.

The aforesaid "Community Supervision Program Certificate" (SCDPPPS FORM-1150) constitutes an administrative order issued by the administrator of an administrative agency.

The attached Community Supervision Program Certificate/Administrative Order dated August 10, 2020, issued by the SCDPPPS Director regarding Defendant Booker reads as follows:

"Know all men by these presents:

*It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES that the offender, [BOOKER PATRICK] who was convicted of the offense(s) [Armed Robbery and Carjacking] on November 5, 2003 in Greenville County meets the requirements for Community Supervision Program as provided for in section 24-21-560 of the South Carolina Code of Laws 1976, as amended. It is therefore **ORDERED** that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below. This release shall not prevent the delivery of the prisoner to authorities of the Federal Government, or any state otherwise entitled to his or her custody. In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole, and Pardon Services is issued on the date below.*

*By **Order** of South Carolina Department of Probation, Parole and Pardon Services---BY
DIRECTOR OF PAROLES, PARDONS AND RELEASE SERVICES".*

This "Community Supervision Program Certificate" (i.e., SCDPPPS Form 1150) contains and indeed constitutes an administrative **Order** that placed Defendant Booker on the community supervision program.

**THE SCDPPPS DIRECTOR DOES NOT POSSESS POWER
NOR AUTHORITY TO ALTER THE TERMS OF DEFENDANT'S SENTENCE**

At the hearing held on April 18, 2022, before this Court (Circuit Judge Frank Addy, presiding) Defendant appeared pro se and set forth two legal position as to why he did not pay any of the supervision fees: (1) That the CSP is a direct consequence of a guilty plea of which a criminal defendant must be made fully aware prior to a court's acceptance of the plea; and (2) That the Community Supervision Program Certificate (SCDPPPS Form-1150) constitutes an Administrative Order by an administrator (i.e., SCDPPPS Director) of an administrative agency (i.e., the SC Department of Probation, Parole, and Pardon Services) which alters the terms of the actual sentence imposed by Judge Miller and is, thus, null and void.

This Court (Judge Addy) ruled upon/decided the merits of the Defendant's first argument/legal position. The Court, however, failed to make a ruling/ decide the Defendant's second argument/legal position.

This Court (Judge Addy) is requested to rule upon/decide the Defendant's second argument/legal position this time around. This argument is being made in full reliance upon binding precedent from the United States Supreme Court in Hill v. United States ex rel.

Wampler, 298 U.S. 460, 56 S.Ct. 760, 80 L.Ed. 1283 (1936) and enunciated more directly to the point on facts indistinguishable to this matter in **Earley v. Murray**, 451 F.3d 71 (2nd Cir. 2006).

To be clear, the Defendant's argument is that the only sentence known to the law is the one entered upon the records of the court. Unless there is an order or directive by the sentencing judge entered upon the record that a defendant meets the requirements for Community Supervision Program as provided for in Section 24-21-560 of SC Code of Laws and is therefore ordered to enter the CSP, then by law it is not a part of a defendant's sentence. Accordingly, an administrative order by a non-judicial official which purports alters or amends the terms of a judicially imposed sentence is null and void. **See, Earley v. Murray, supra.**

The Defendant, Patrick Lee Booker, is an on-boarding honorary member of REFORM Alliance In a report issued earlier this year with the Fines and Fees Justice Center, we revealed that probation and parole fees routinely trap individuals and their families in debt. Nationwide, two of every three people on probation make less than \$20,000 per year, with nearly 40% of those making less than \$10,000 annually and a criminal record can often make finding stable employment more difficult.

We want to continue to shed light on the challenges parents on supervision face so that we can improve outcomes for families across the country.

REFORM's Word of the Week

Each week, REFORM Alliance will present a word as a tool to educate and inform all members about the various facets of the criminal justice system

According to a report issued by the Brennan Center, fines and fees are defined as:

Fine (*noun*)

fin | fahyn

A monetary penalty imposed by the court charged to people in the justice system. Fines can be imposed in lieu of incarceration or in addition to incarceration / supervision. The sum of money due is often written in statute and based on the severity of the crime. These financial penalties are often intended as both a deterrence and punishment by the court and lawmakers.

Fees (*plural noun*)

/fē/

Fees are itemized payments for court activities, supervision, or incarceration charged to people in the justice system. Fees are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants or people convicted of offenses, who are seen as the "users" of the courts.

I, Defendant Patrick Lee Booker, was not lawfully placed on Community Supervision (i.e., probation) and therefore the supervision of me was unlawful. I speak for me, and every person who is similarly situated to me, in declaring that I will not pay one dime of my hard-earned money for the unlawful supervision of me. I shall not pay one brown penny towards it. I advise the Court to take this matter under advisement and to give thorough consideration of my argument that I was not lawfully placed on supervision, as an administrative official, no matter how high his or her office may be, cannot alter the terms of a judicially imposed sentence.

RESPECTFULLY SUBMITTED,

Patrick L. Booker

Patrick L. Booker, Pro Se

August 15, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
-V-)
PATRICK LEE BOOKER,)
DEFENDANT.)
_____)

PROBATION HEARING

TRANSCRIPT OF RECORD

AUGUST 15, 2022
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

FOR SCDPPPS: JESSICA KINARD, ESQ.

ALSO PRESENT:

DEFENDANT: PATRICK BOOKER, APPEARED PRO SE

AGENT RICHIE WILLIAMS, SCDPPPS

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
HEARING	3
CERTIFICATE OF REPORTER	15

(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 THE COURT: We are on the record. We are revisiting the
2 matter concerning Patrick Booker. Mr. Booker is here and I
3 think probation is here.

4 MS. KINARD: Yes, Your Honor.

5 THE COURT: Yes, ma'am. For the record, this is a
6 matter the Court initially addressed in April of this year.
7 Mr. Booker appeared and there were community supervision
8 fees, which he disputed owing, and essentially the Court
9 found that -- the Court appreciates the fact that Mr. Booker
10 takes issue with the law as it relates to supervision fees.
11 He was in arrears \$970.00 and indicated that paying it
12 wasn't an option, he just took the position that he did not
13 owe the community supervision fees. It is my understanding,
14 Ms. Kinard, that they haven't been paid today?

15 MS. KINARD: That is correct, Your Honor.

16 THE COURT: Anything further from the Department on
17 this?

18 MS. KINARD: Also, your order appreciated that Mr.
19 Booker intended to appeal your ruling and that he should
20 also, in the alternative, post those fees as a bond during
21 his appeal. That has not been done either.

22 THE COURT: Mr. Booker, what's the situation?

23 MR. BOOKER: Yes, sir. May it please the Court. When I
24 appeared before Your Honor on April 18, 2022, I set forth
25 two distinct legal positions as to why I believed that I am

1 not required to pay the supervision fees. Your Honor ruled
2 on one of them and did not address the other one. The other
3 one, which is the one that is, kind of, most relevant
4 because it attacks directly the authority of the Director of
5 the Department of Probation Parole and Pardon Services to
6 place me on community supervision because he is an
7 administrative official, not a judicial official. My
8 position is that my sentence, as entered on the records in
9 the Thirteenth Judicial Circuit, entered by Judge Miller,
10 does not include an order, a directive, or instruction for
11 me to enter and complete the Community Supervision Program,
12 and that is determinative because my judicially imposed
13 sentence on these indictments does not include a judicial
14 order for me to complete the program.

15 My challenge is that the administrative order entered
16 by Jerry Adger, the Director of the Department of Probation,
17 Pardon, and Parole Services, that order is null and void to
18 the extent that it alters the terms of my sentence as
19 judicially imposed. When I was present before Your Honor, I
20 asked that you take judicial notice of that fact. I know
21 that we're in the Eighth Judicial Circuit, because I am
22 living in a different county. You probably can't access
23 those records, but if you were to access the actual sentence
24 commitment sheets and/or the transcript of the hearing, it
25 would show no judicial official, no judge, ever placed me on

1 the Community Supervision Program.

2 I am relying on case law enunciated by none other than
3 Justice Sonia Sotomayor prior to her becoming a Justice when
4 she was a Federal Judge in the Second Circuit in New York.
5 She sat on a panel in a case called Early v Murray. In this
6 case, the facts are indistinguishable in the sense that the
7 Defendants were arguing that they were not required to be on
8 post-release supervision, because the judge had not
9 sentenced them to that. It made it all the way up to the
10 Federal Court. What the Federal Court did is they relied on
11 a case that was enunciated by the United State's Supreme
12 Court seventy years ago, a case called Hill v United States
13 in reference to Wampler, in which the United State's Supreme
14 Court enunciated this rule of law. The only sentence known
15 to the law is the one entered upon the records of the Court.
16 It says that any other court will close its ears to a
17 suggestion that the sentence is not the authentic expression
18 of the judge at the time.

19 I'm submitting my return that I have served on Ms.
20 Kinard prior to the top of the hearing that I would like you
21 to consider, Your Honor. It's my return to the citation
22 that's been issued in this case.

23 THE COURT: Sure. If you would hand it to the Clerk.

24 MR. BOOKER: I would ask that the Court thoroughly
25 consider this position, because this particular position

1 right here is determinative of all the positions. The other
2 position I had that you ruled on I was saying that my guilty
3 plea would be involuntary, because it's a direct
4 consequence. Your Honor ruled that it's not a direct
5 consequence, it's a collateral consequence in compliance
6 with what the binding precedent in this state does say in
7 Jackson v State, that it is a collateral consequence. You
8 did rule on that aspect of it, but the other aspect, the
9 fact that the Director of the Department of Probation Parole
10 and Pardon Services does not possess the power to place me
11 on the Community Supervision Program. He has the power to
12 monitor me and supervise me and set forth all the conditions
13 once I have been placed on the Community Supervision
14 Program, but he himself cannot place me on the Community
15 Supervision Program. So therefore, the so-called
16 supervision that they so-call performed was unlawful and
17 therefore the fees deriving from that are, indeed, unlawful.
18 My position is that I should not be required by any lawful
19 authority to pay anything that's unlawful.

20 Again, I would like to set forth this position for the
21 Court. I am not disputing -- and I spoke to Ms. Kinard
22 about that. I am not disputing the fact that South Carolina
23 law, particularly 24-21-560 of the South Carolina Code of
24 Laws does indeed require the completion of the Community
25 Supervision Program for a sentence of my type, for a no-

1 parole offense. It does, indeed, require that. My position
2 is that in order for me to be on the Community Supervision
3 Program it must be lawfully imposed. That is the nexus.
4 I'm supposed to be on it. The law says I'm supposed to be
5 on it, but it has to be imposed by the one that who lawfully
6 impose it, which is a judge, not an administrative official.

7 In this instance, we have the program certificate which
8 clearly states that it is ordered that the said prisoner
9 enter the Community Supervision Program at the end of his or
10 her active sentence. So, this is clearly an order, and it's
11 clearly an order that affects my sentence. So, the question
12 becomes is this a judicial order or a less than judicial
13 order. It's less than judicial. It's not a judicial order
14 and so it's fatal.

15 This is backed up -- I'm talking about that case Early
16 v Murray was won. It was a petition for a rehearing where
17 the government tried to say well, it applies by operation of
18 law, because the statute says it's mandatory. They broke
19 down how that is just not the case. I gave an example, for
20 academic reasons, to show in the State of South Carolina you
21 have mandatory minimums. For example, you may have armed
22 robbery have a mandatory minimum of ten years. If I plead
23 guilty to armed robbery, the judge, under the law, is
24 required to give me no less than ten years. But, if the
25 judge was to impose a sentence of five years in violation of

1 the statute or in disregard of the statute, when I go to the
2 Department of Corrections that five years is controlling.
3 No matter how wrong the judge may have been, it would be the
4 other party, which is the State, would be the aggrieved
5 party would have to appeal that and get an appellate court
6 to right that wrong. But that Judge's decision would be
7 controlling. The administrator that's involved in that
8 would be the director of the prison. If, at the end of my
9 five years, he refused to release the prisoner because the
10 statute says no less than ten years, then that administrator
11 would be violating my due process rights.

12 THE COURT: Mr. Booker, I'll note your argument. To the
13 extent that the Court needs to rule on the question of
14 whether the director of triple "P" had authority to put you
15 on community supervision, the Court will conclude for
16 purposes of your appeal, and just so the Court is clear, the
17 Court will conclude that he did possess that authority by
18 virtue of South Carolina law.

19 Ms. Kinard, any response to anything that has been
20 presented by Mr. Booker?

21 MS. KINARD: No, Your Honor. I would agree with your
22 position that 24-21-560 does confer that authority to the
23 director and the Circuit Court maintains jurisdiction to
24 order any payment. I'll also note, and I should have
25 earlier and I apologize, that Mr. Booker's CSP ended in June

1 of this year, so I don't believe revocation is possible, but
2 whatever Your Honor believes is appropriate as far as other
3 remedies we would like to seek those.

4 MR. BOOKER: I would like to address that, .if I may.

5 THE COURT: Mr. Booker, here's kind of where we are.
6 I'm not going to find that you're in willful violation of
7 your community supervision. I'm not looking to put you in
8 prison for violating the terms of your community supervision
9 because you take the position that you don't owe the funds,
10 and I'm going to let that get appealed on out there. The
11 reason for the ordering that you pay the \$970 -- and that's
12 what's at issue in this case. You haven't paid it, okay?
13 You haven't paid it. You indicated at the hearing earlier
14 this year that you had the money to pay, that you simply had
15 not paid it into the Clerk's office to be held until this
16 appeal is sorted out. All right? That's all that we're
17 here on today. That part of my order still hasn't been
18 complied with.

19 Mr. Booker, you've heard the adage, "If the only tool
20 you've got is a hammer, then every problem looks like a
21 nail." There are limited means by which I can enforce an
22 order. I can put somebody in jail. I can hold them in
23 contempt. I can fine them. My power is pretty limited. It
24 all involves restraint of liberty, which I really don't want
25 to do. Okay? I really don't want to do. Do you have the

1 \$970 to pay the Clerk or not?

2 MR. BOOKER: I don't, Your Honor.

3 THE COURT: You do not.

4 MR. BOOKER: I do not, and it's more than that, Your
5 Honor. It's \$1,150, I believe it is. And I want to show
6 the maliciousness. I understand the Court's power and I
7 understand the Court's position that it doesn't want to
8 constrain my liberty in this matter, because it doesn't
9 believe I willfully did it. In fact, because it believes
10 I'm making a legal argument. I would like to state that I
11 received this from the South Carolina Department of
12 Probation, Parole, and Pardon Services. It's a letter,
13 Notice of a Letter to a Debtor. They've got the Offset Debt
14 Collection Act. In this letter they break down how much I
15 supposedly owe them, and they say that if I don't pay them
16 that they would go through the Department of Revenue for
17 South Carolina and seek to garnish my wages. So, if I
18 received this letter from the South Carolina Department of
19 Probation, Parole, and Pardon Services, why then are they
20 seeking to bring me in front of a judge to try to get the
21 judge to inflict some kind of penalty? If you've got issues
22 with the money, I've done told you I'm not going to pay the
23 money, then just go ahead and try to garnish my wages.
24 Because this is going all the way up to the top.

25 THE COURT: Mr. Booker, that's fine. That's good. So,

1 now it's \$1,150 that you owe. Are you going to be able to
2 access \$1,150? Can you give them \$1,150? Do you have that
3 in your bank account, because you said when we had this
4 initial hearing that you had the \$970 and that payment was
5 not going to be an option.

6 MR. BOOKER: The payment is an issue now. The
7 circumstances have changed.

8 THE COURT: So you do not have \$1,150?

9 MR. BOOKER: I do not have \$1,150.

10 THE COURT: All right. Well, Mr. Booker, I'll give you
11 until Friday to find \$1,150. On Friday, on that time, you
12 will be subject to being arrested, okay? So, you'll need to
13 turn yourself in at the Law Enforcement Center. I'll be
14 finding you in civil contempt. You can expunge that
15 contempt by paying \$1,150 as of this Friday. Mr. Richie?

16 MR. WILLIAMS: Just to be clear, it's actually \$1,050,
17 not \$1,150.

18 THE COURT: Okay, \$1,050. Thank you. So, you can
19 expunge any civil contempt by ultimately paying that. I'll
20 give you until Friday to pay it. If not, you'll be locked
21 up and when you are able to pay it then you will be
22 released.

23 MR. BOOKER: Very well. May I ask you, Your Honor, this
24 question right here. All right. I pay the money. Who does
25 the money go to?

1 THE COURT: The Clerk of Court.

2 MR. BOOKER: Okay.

3 THE COURT: She holds it while your appeal is pending.

4 MR. BOOKER: All right. So, why is the Department of
5 Probation, Parole, and Pardon Services here today trying to
6 enforce that? Why is it so -- if they're not ever going to
7 get the money?

8 THE COURT: Mr. Booker, they have an obligation to
9 enforce my order. I issued an order in August -- sorry,
10 April, ordering you to do a certain thing. If you failed to
11 do it they have to bring that matter back to my attention
12 and then I have to do what I have to do. So, you've got
13 until Friday --

14 MR. BOOKER: Okay, well --

15 THE COURT: -- at 5:00. If you haven't paid it by
16 Friday at 5:00 to the Clerk's Office, turn yourself in
17 across the street. If you fail to turn yourself in I will
18 issue a Bench Warrant for you and you will be in contempt,
19 perhaps criminal contempt, for failing to turn yourself in.
20 Do you understand?

21 MR. BOOKER: Yes, sir, and I will be brought back for a
22 hearing to be heard in accordance with the law, right?

23 THE COURT: Yes, and I can put you in jail for six
24 months or a year for criminal contempt. I don't want to do
25 that. Find the money. You said you had it.

1 MR. BOOKER: It will galvanize my appeal, Your Honor.
2 It will galvanize it.

3 THE COURT: Very good, Mr. Booker. Then your choice.
4 See you Friday.

5 MR. BOOKER: Yes, sir.

6 (WHEREUPON, THE HEARING CONCLUDED.)

7 (DEFENDANT ASKED A QUESTION AFTER THE CONCLUSION OF THE
8 HEARING.)

9 MR. BOOKER: Your Honor, with regard to your ruling on
10 that issue about the appeal so I can amend my appeal,
11 because you said you made a finding that I do owe the money.

12 THE COURT: Fair enough. I'm don't know when I will get
13 to it. I really don't know. We have this trial going on.
14 You understand what your obligations are and what you've got
15 to do by Friday to keep yourself from being put in jail.
16 So, when I get the order issued I'll get the order issued,
17 but you've got to pay the money by Friday and I'll probably
18 do an order something quick right now. It's probably not
19 going to be anything formal like the actual order that I
20 will issue in your case. Okay?

21 MR. BOOKER: Very well. Good to see you.

22 AGENT WILLIAMS: Just one more thing for the record.
23 This case was supposed to be over in June. We're going to
24 issue an order to terminate this and now it's just a civil
25 matter, or how do you want to do that?

1 THE COURT: Let's see what Mr. Booker does by way of
2 Friday.

3 MR. WILLIAMS: Thank you, sir.

4 MR. BOOKER: When you issue your order, could you
5 address those issues that I --

6 THE COURT: I will make every effort to, Mr. Booker.
7 The record is clear and I wish you luck. See you Friday.

8 MR. BOOKER: Very well, Your Honor.

9 *** END OF REQUESTED TRANSCRIPT OF RECORD***

10

11

12

13

14

15

16

17

18

19

20

21

22

23

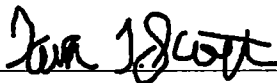
24

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth 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 evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 15th day of August, 2022.

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



Tara T. Scott, CVR

Official Court Reporter

September 12, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

STATE of SOUTH
CAROLINA,

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 02-GS-23-00935, 9233,
9234, 9239

-v-

PATRICK LEE
BOOKER,
Defendant.

SUPPLEMENTAL ORDER CONCERNING
COMMUNITY SUPERVISION FEES

Addy, J.

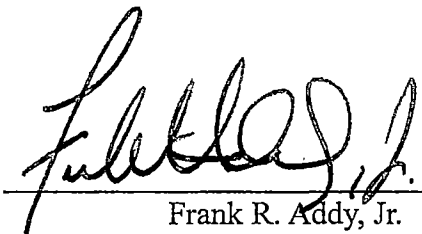
THIS MATTER ORIGINALLY CAME BEFORE THE COURT on April 18, 2022 on a Community Supervision violation. Mr. Booker raised several arguments as to why his placement on Community Supervision violated state and federal law, and the Court was informed that, but for his failing to pay his supervision fees, Mr. Booker was fully compliant with all the terms and conditions of his supervision. The Court issued an order dated April 28, 2022 finding that Mr. Booker's placement on Community Supervision complied with all applicable laws and ordering that he deposit the supervision fees owed with the Clerk of Court pending an anticipated appeal which has been filed. The Court was subsequently informed that Mr. Booker had not deposited the fees with the Clerk, and the Court ordered that a hearing be reconvened on August 15, 2022.

At the August 15th hearing, Mr. Booker again appeared *pro se*, and the Department of Probation, Pardon, and Parole was represented by Jessica Kinard, Esq. Mr. Booker made additional arguments as to why his being placed on Community Supervision violated the law, and the Court again found that his participation in that program comported with all applicable state and federal law. The Court again reiterated the requirement that he deposit his supervision fees with the Clerk pending his appeal and gave Mr. Booker until the end of the week to do so.

The Court was subsequently informed that Mr. Booker deposited his pending fees in the sum of

\$1,050.00 with the Clerk. Accordingly, the Court orders that Mr. Booker be released from Community Supervision, but his release from supervision shall not, of course, affect the justiciability of his underlying appeal.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge

September 1, 2022, *nunc pro tunc*
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JUL 17 2023

SC Court of Appeals

APPELLATE CASE NO. 2022-000641

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Judge

Trial Court Case No. 2002-GS-23-09233, 2002-GS-23-09234,

2002-GS-23-09235, 2002-GS-23-09239

STATE OF SOUTH CAROLINA RESPONDENT,

v.

PATRICK LEE BOOKER APPELLANT.

CERTIFICATE OF COMPLIANCE

I, PATRICK LEE BOOKER, HEREBY CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL PERMITTED TO BE INCLUDED BY THE COURT AND NOT ANY OTHER MATERIAL.

JULY 12, 2023.

Patrick L. Booker