STATE OF SOUTH CAROLINA

In The Court of Appeals

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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.

FINAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This criminal appeal, being brought by Legal Assistant/Paralegal Patrick L. Booker—***an honorary member of REFORM Alliance***—is nacho average appeal: this criminal appeal involves matters of significant public interest, ranging from the separation or interplay of power and authority of judges and of probation administrators to impose enacted law (statutory mandates) on criminal defendants, to the significance of a judge's oath, on to the massive violation of federal constitutional rights, civil rights, and voter rights that have been committed against thousands of criminal defendants similarly situated to Patrick Booker by South Carolina's current system of "***unjust* criminal justice**" as will be shown by the issues presented in this appeal.

In considering the merit of the issues raised by this appeal, please keep in mind that Supreme Justices of the United States previously took an interest in resolving the first issue on this appeal (i.e., failure to inform of mandatory supervision) by granting certiorari in *Lane v. Williams* to consider this issue but was unable to do so, as the issue became moot in that case. Separately, the Honorable Sonia Sotomayor, before she became a Supreme Justice of the United States, took an interest, as a federal circuit judge, in the second issue on this appeal (i.e., mandatory supervision must be entered on the record of the court, and can only be imposed by a judge) when she sat on an appellate panel for the Second Circuit to resolve that issue in *Earley v. Murray*, relying upon precedent of the United States Supreme Court. Hence, this case is very likely to again reach the United States Supreme Court. Thus, the judicial members who now decide the issues presented by this appeal are well advised to fully adhere to the pledge you gave, as part of your oath, which is to rule only *after* considerate deliberation.

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3. DOES ALLOWING THE DIRECTOR OF PROBATION TO ALTER THE TERMS OF JUDICIALLY IMPOSED SENTENCES VIOLATE THE SEPARATION OF POWERS DOCTRINE?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted the Appellant at the October 2002 term of General Sessions for four counts of Armed Robbery (2002-GS-23-9233, -9235, -9237, -9239), and one count of Carjacking (2002-GS-23-9234), among other counts not relevant here.

On November 5, 2003, the Appellant pled guilty as indicted. The Honorable Edward W. Miller sentenced the Appellant to concurrent terms of twenty (20) years for each of the four-Armed Robbery charges, and to twenty (20) years for Carjacking

Before accepting the guilty plea, Judge Miller advised the Appellant of both the nature of the charges against him and the constitutional rights that Appellant were waiving by pleading guilty. After the prosecutor established a factual basis for the plea, the Appellant indicated that he understood his rights and wished to plead guilty.

At the time of his guilty plea, South Carolina law required that every sentence for certain felonies, including armed robbery and carjacking, must include a term of mandatory supervision in addition to the term of imprisonment[1].

During the acceptance of the guilty plea, neither the trial judge, the prosecutor, nor defense counsel informed the Appellant that his sentence included a mandatory term of post-release supervision.

On September 15, 2008, the Appellant was informed by a prison classification officer that pursuant to South Carolina law his sentence included a mandatory term of community supervision.

[1] 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.")

On October 17, 2008, the Appellant filed an application for post-conviction relief ("PCR") (2008-CP-23-07865) alleging that his guilty plea had been entered involuntarily due to the failure of the trial judge to inform him of the direct consequence of the mandatory supervision term of the Community Supervision Program ("CSP").

On January 13, 2010, the PCR judge, the Honorable John C. Few, construed the Appellant's claim as one for Ineffective Assistance of Counsel[2] and thereupon found that the PCR application was untimely, successive, and meritless considering the *per curiam* opinion of South Carolina Supreme Court in the matter of *Jackson v. State*, 349 S.C. 62, 562 S.E.2d 475 (S.C. 2002). Judge Few further concluded that the issue was not ripe for judicial review as the Appellant was not yet participating in the CSP.[3]

The Appellant timely filed an appeal from Judge Few's Order of Dismissal to the Supreme Court of South Carolina. On February 17, 2010, the Supreme Court dismissed the appeal, and on February 25, 2010, the Appellant timely filed a petition for rehearing.

[2] The Appellant framed the issue as a claim of an Involuntary Guilty Plea (attributable to the judge's failure to inform), not Ineffective Assistance of Counsel (attributable to counsel's failure to inform). Thus, the issue of "Involuntary Guilty Plea" (which is being now being considered on appeal) was never decided by the PCR judge.

[3] Ironically, the conclusion, by Judge Few, that the issue was not ripe for judicial review essentially preserved the issue for future litigation. Thus, Judge Few's prior findings as to the timeliness, successiveness, and merits were eviscerated by his subsequent conclusion that the issue was not yet ripe. Because the issue on appeal arises out of the Appellant's participation in the CSP, the matter is now ripe for adjudication.

On April 7, 2010, all five (5) justice members of the Supreme Court of South Carolina denied the Appellant's petition for rehearing. Ironically, those judges did not end the exercise of their authority there however: within the same ORDER denying rehearing, Associate Justices *Kaye Hearn*, *John Kittredge*, *Donald Beatty*, and *Costa Pleicones*, led by then-Chief Justice *Jean Toal*, all banded/conspired together to issue a pre-filing injunction against the Appellant's ability to file further collateral challenges to his 2003 guilty plea in the circuit court.[4] Particularly, all five justice members issued an ORDER prohibiting the Appellant from filing any further collateral actions in the circuit court challenging his 2003 guilty plea without first obtaining permission to do so from the Supreme Court of South Carolina. Each of the five justice members agreed to issue the pre-filing injunction without affording the Appellant any semblance of due process or equal protection of the law, in making the injunction.[5]

[4] Despite their cognizance of the fundamental tenets of both their oath of office and of Due Process/ Equal Protection of Law, all five justice members decided to issue an Order restricting the Appellant's statutory right to access to the circuit court, ***without affording Appellant any notice or opportunity to be heard.*** *Cf.* **State v. Parker**, 7 S.C. 235 (S.C. 1876) ("A Judge has no power of his own mere motion to make an order in a cause affecting the rights of a party.").

[5] Inasmuch as the Supreme Court had already dismissed the PCR appeal initially (without any consideration for, or even a request for, a pre-filing injunction), there was no legitimate reason to restrict the Appellant from filing ***in another court***, except as to hinder, prevent, and obstruct the Appellant in the free exercise and enjoyment of his statutory right (S.C. Code of Law, Section 17-27-20) to file PCR applications in the circuit court. Accordingly, all five members of the South Carolina Supreme Court committed a conspiracy against the Appellant's civil rights. See, S.C. Code of Laws, Section 16-5-10, "***Conspiracy Against Civil Rights***," which makes it a felony offense "*for two or more persons to band or conspire together... to hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State*." If no conspiracy, why then did they refuse to afford the Appellant notice and opportunity to be heard *prior to* issuing an Order restricting the enjoyment of his right to freely file in circuit court?

On August 10, 2020, after having served more than eighteen (18) years of imprisonment, the Appellant was released from the South Carolina Department of Corrections. The prison authorities who released the Appellant provided him with a copy of SCDPPPS Form 1150 "COMMUNITY SUPERVISION PROGRAM CERTIFICATE" wherein the Director of the South Carolina Department of Probation, Parole, and Pardon Services ordered the Appellant's entrance and participation in the mandatory Community Supervision Program (CSP) and imposed several terms and conditions for the Appellant to comply with including, but not limited to, the condition that Appellant pay a supervision fee as determined by the SCDPPPS. (ROA at Pg. 1).

The Appellant refused pay any of the supervision fees. By letter dated October 15, 2021, the SCDPPPS forwarded the Appellant a letter entitled "Notice Letter to Debtor" wherein that administrative agency stated that Appellant owed the SCDPPPS a debt for a certain amount, and notified the Appellant of its "intention to submit th[e] debt to the South Carolina Department of Revenue for the calendar year 2021 for collection through the Setoff Debt Collection Act" if the Appellant failed to pay the debt within thirty (30) days from the date of the notice. (ROA at Pg. 2).

By letter dated November 10, 2021, the Appellant notified the SCDPPPS' Office of General Counsel of his legal challenge to the authority of the SCDPPPS' over him. (ROA at Pg. 3-8).

By Citation dated April 7, 2022, the SCDPPPS' Agent Richard K. Williams charged the Appellant with knowingly and willfully violating the conditions of CSP based upon the Appellant's refusal to pay the supervision fees. (ROA at Pg. 9).

At a hearing held on April 18, 2022, before the Honorable Frank R. Addy, SCDPPPS Agent Williams alleged that the Appellant was in violation of the conditions of the CSP based upon the Appellant's knowing and willful refusal to pay the supervision fees.

In defense to the Citation and allegation that he was in violation of the CSP, the Appellant interposed two arguments: that he did not owe the fees because (1) the CSP requirement rendered his guilty plea involuntary because it was a direct consequence of his guilty plea of which he was not informed at the time of his plea thereby making the plea null and void, as having been taken in violation of due process; and (2) because the CSP requirement had not been imposed as part of his sentence by Judge Miller the SCDPPPS Director did not possess the power nor authority to alter the terms of Judge Miller's sentence. Appellant provided Judge Addy a memorandum of law to consider, detailing his argument.(ROA at Pg.10-15)

Judge Addy, after taking the matter under advisement, issued an "**ORDER CONCERNING COMMUNITY SUPERVISION FEES**", dated April 28, 2022,

wherein he found that considering *Jackson v. State*, *supra*, the imposition of Community Supervision, and the accompanying fees to pay for Appellant's supervision under that program, is a collateral consequence of sentencing. (ROA at Pg.31). Judge Addy found, therefore, that the plea was not taken in violation of Appellant's due process rights and ordered the Appellant to pay the fees associated with his supervision under the CSP. (ROA at 31). Judge Addy did not decide-at that time-the Appellant's alternative argument challenging the power and authority of the SCDPPPS Director to alter the terms of Appellant's sentence through his administrative imposition of the CSP upon the Appellant.

In order to protect the justiciability of this appeal, Judge Addy required the Appellant to deposit his outstanding supervision fee balance with the clerk of court pending resolution of this appeal. (ROA at Pg. 31).

After the Appellant initially failed to deposit the outstanding supervision fee balance with the clerk of court, the SCDPPPS served another Citation on Appellant and caused the matter to be brought back before Judge Addy on August 15, 2022. At that hearing the Appellant informed Judge Addy that he had failed to address the Appellant's alternative argument that the SCDPPPS Director did not possess the power or authority to alter the terms of the Appellant's sentence. (ROA at Pg 42) In

support of his alternative argument, the Appellant explained to Judge Addy that the CSP was not ordered by Judge Miller at the time of the his sentence and therefore the CSP was not entered upon the records of the court as being a part of the terms of the Appellant's sentence and that in *Hill v. Wampler* the U.S. Supreme Court held that the only sentence known to the law is the one entered upon the records of the court. (ROA at Pg. 43). The Appellant further explained to Judge Addy that a matter-- materially indistinguishable to the Appellant's situation--was decided by the Honorable Sonia Sotomayor in the case of *Earley v. Murray*, and the Appellant provided Judge Addy a memorandum of law to consider. (ROA at Pg. 43).

Notwithstanding his judicial oath to rule only after considerate deliberation, Judge Addy decided from the bench that the SCDPPPS Director had the power and authority by virtue of South Carolina law to place the Appellant into the CSP, without first reviewing or considering either of the two on-point, federal appellate decisions cited by Appellant.[6]

[6] By ***"rejecting out of hand"*** the Appellant's citation to a U.S. Supreme Court opinion (that the only sentence known to the law is the one entered upon the records of the court) as well as the Appellant's citation to a decision (that an administrator cannot alter a judicially imposed sentence) rendered by a federal circuit judge (who is now a federal associate justice) on a matter alleged to be materially indistinguishable, Judge Addy apparently believed that South Carolina law is the only law he is to be guided and bound by. The Appellant, a certified Legal Assistant/Paralegal, is of the opinion that it is discourteous, if not disrespectful, for a judge, **when ruling from the bench**, to refuse or otherwise to fail to ***"first review and consider"*** a U.S. Supreme Court opinion (or any other legal/judicial opinion) once it has been interposed by a party (or his authorized representative) as either "on-point/binding precedent" or as being "materially indistinguishable" to the case before the judge. Once it is interposed that a cited case holding is on-point/binding or materially indistinguishable, it becomes incumbent upon the judge to discern for him/herself the relevancy of the cited authority. Even if the judge concludes the cited opinion is irrelevant/inapplicable, he or she would have discharged that vital part of the judicial oath: to rule only after considerate deliberation.

Thereafter, Judge Addy again ordered the Appellant to deposit the outstanding supervision fee balance with the clerk of court. The Appellant subsequently complied with Judge Addy's order, and Judge Addy issued a "**SUPPLEMENTAL ORDER CONCERNING COMMUNITY SUPERVISION FEES**" dated September 1, 2022, wherein he memorialized the nature of the proceedings, ordered the Appellant's release from the CSP, and noted that the release must not affect the justiciability of this appeal. (ROA at Pg. 54-55).

By letter dated August 22, 2022, the Appellant sought and obtained from the SCDPPPS, pursuant to the Freedom of Information Act, the exact number of criminal defendants who have been placed into the CSP by the SCDPPPS, *without a court-order for such placement*, including the exact dollar amount that each affected criminal defendant have paid in supervision fees from 1996 until 2022. The data provided by the SCDPPPS indicates that it has collected more than twenty million ($20,000,000) dollars in supervision fees from fifteen thousand-nine hundred and eighty-three (15,983) criminal defendants placed into the CSP by the SCDPPPS from 1996 to 2022. (NOTE: **Due to voluminous amount of data comprised in the pdf. provided by the SCDPPPS, the Appellant will not seek inclusion of the same in the designation of matter to be included on the record on appeal, unless requested by the court.**) This appeal follows.

STANDARD OF REVIEW

The appellate court sits to review criminal cases for errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S. E.2d 827, 829 (2001). This court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* at 6, 545 S.E.2d at 829

FACTS

The Appellant was convicted in 2003, after pleading guilty to three counts of Armed Robbery and one count of Carjacking, *inter alia*. At the time of his plea, no one informed the Appellant that he would be subjected to a mandatory supervision term following his release from confinement.

On August 10, 2020, the Appellant was released from the South Carolina Department of Corrections ("SCDC") and was placed into the community supervision program by the SCDPPPS, pursuant to an administrative order titled Community Supervision Program Certificate[7]. (ROA at Pg. 18)

[7] SCDPPPS Form 1150 "COMMUNITY SUPERVISION PROGRAM CERTIFICATE" provides: ***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] was convicted of the offense(s) [ARMED ROBBERY, AND CARJACKING] and 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 [BOOKER, PATRICK] enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed herein 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. BY Order of SCDPPPS. (ROA at Pg. 1)

ARGUMENTS

1. THE TRIAL COURT ERRED IN CONCLUDING THAT THE COMMUNITY SUPERVISION PROGRAM IS A COLLATERAL CONSEQUENCE OF SENTENCING AND THAT APPELLANT'S GUILTY PLEA WAS NOT TAKEN IN VIOLATION OF HIS DUE PROCESS RIGHTS.

The conclusion by Judge Addy that the Community Supervision Program (CSP) is a collateral consequence of sentencing is based on the opinion of the South Carolina Supreme Court in the matter of Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002).

The *per curiam* opinion rendered by the Supreme Court in *Jackson, supra*, is erroneous however, and the Appellant hereby utilize this criminal appeal to argue against that erroneous precedent.[8]

The Supreme Court in *Jackson v. State* granted certiorari "to determine whether participation in a 'community supervision program'[] is a collateral consequence of sentencing." Id. After a very ***cursory*** analysis[9], it held that it is. *Id.*

[8] Inasmuch as the Appellant is arguing against Supreme Court precedent, he hereby moves to certify this appeal for review by the Supreme Court pursuant to Rule 204, SCACR.

[9] The analysis in Jackson was so ***cursory*** that the court erroneously stated (in the first paragraph) that the community supervision program was defined in S.C. Code Ann. Section 24-13-100 (Supp. 2001). Contrary to the Supreme Court's "analysis", that section of law does not define (or even mention) the community supervision program.

In that case the petitioner Freddie Jackson entered a guilty plea to a "no parole offense" which subjected him to the provisions of S.C. Code of Laws, Section 24-21-560(A) "**Community Supervision Program**" which reads, in relevant part, as follow: "*Notwithstanding any other provision of law,..., 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.*"

Mr. Jackson challenged his conviction by contending that his guilty "plea was involuntary because his trial counsel was ineffective in failing to inform [him] about the [Community Supervision Program] in advising him whether to plead guilty." *Jackson, supra.* The state Supreme Court disagreed with Mr. Jackson's argument, stating: "In our view, the [CSP] serves essentially the same function for persons convicted of 'no parole offenses' as parole does for other inmates. It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility, [], or ineligibility, [], in order to render effective assistance." *Jackson,* supra.

That narrow, cursory analysis (i.e. "in our view, the [CSP] serves essentially the same function...as parole does") is where the state Supreme Court went wrong. That

is because, regardless of whether in *its view* the CSP "serves essentially the same function as paroles does", the *Jackson* court was supposed to analyze the "***result***"[10] of the CSP, not its ***function***[11], in assessing the consequences of the CSP. See, Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364 (4th Cir. 1973) ("The distinction between 'direct' and 'collateral' consequences of a plea...turns on whether the ***result*** represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.") (emphasis added).

When correctly analyzed it becomes obvious and clear that the CSP (i.e., a mandatory term of post-release supervision) is a not a "collateral consequence of sentencing" but rather it is a *direct consequence of a plea/conviction*. In support of this argument, the Appellant hereby adopts and incorporates herein by reference the sound judicial wisdom of the *en banc* decision of the Supreme Court of Washington in the matter of State v. Ross, 129 Wash. 2d 279, 916 P.2d 405 (1996) as well as the decision of the New York Court of Appeals in the matter of People v. Catu, 4 NY3d 242, 244, 825 N.E.2d 1081 (2005) for the proposition that where a "statute imposes a mandatory parole term to be served following completion of the period of

[10] The definition of "**Result**" in the Merriam-Webster Dictionary is: "something that results as a **consequence**, issue, or conclusion."

[11] The definition of "**Function**" in the Merriam-Webster Dictionary is: "the action for which a person or thing is specially fitted or used or for which a thing exists: **purpose**."

confinement, the parole term necessarily is a direct consequence of the guilty plea." Carter v. McCarthy, 806 F.2d 1373 (9th Cir. 1986).

Therefore, the conclusion by the *Jackson* court and hence Judge Addy that the CSP, and the accompanying fees under the CSP, is a collateral consequence of sentencing, was an error of law. Accordingly, the *per curiam* opinion in *Jackson* and Judge Addy's judgment--which was based upon *Jackson*--must be reversed.

Because the CSP is indeed a direct consequence of a plea for which a defendant must be made aware prior to pleading guilty in order for the plea to comport with due process requirements (a plea of guilty can be voluntary only if it is "entered by one fully aware of the direct consequences" of his plea. *Brady v. United States*, 397 U.S. 742, 749), the failure to inform the Appellant that his sentence would include a mandatory supervision term following his release from confinement deprived him of due process of law, rendering his guilty plea involuntary and invalid.[12]

Therefore, the conclusion by Judge Addy that the Appellant's plea was not taken in violation of due process was an error of law. Accordingly, the Judge Addy's judgment must be reversed, and the Appellant's guilty plea must be vacated.

[12] In Lane v. Williams, 455 U.S. 624 (1982) the Supreme Court "granted certiorari to consider whether the failure of the trial court to advise respondents of [the] mandatory parole requirement prior to accepting their guilty pleas deprived them of due process of law." The Appellant will seek certiorari in the U.S. Supreme Court if necessary.

2. THE TRIAL COURT ERRED IN CONCLUDING THAT THE DIRECTOR OF PROBATION HAD POWER BY VIRTUE OF SOUTH CAROLINA LAW TO PLACE APPELLANT ON CSP.

At the hearing held on August 15, 2022, before Judge Addy, the Appellant argued that he did not pay any of the supervision fees that the SCDPPPS claimed he owed because "the administrative order entered by Jerry Adger, the Director of the Department of Probation, Pardon, and Parole Services, [] is null and void to the extent that it alters the terms of [the Appellant's] sentences as judicially imposed." (ROA at Pg. 42, Tr. pg. 4, lines 15-19).

The Appellant clarified his legal proposition stating: "My position is that my sentence, as entered on the records in the Thirteenth Judicial Circuit, entered by Judge Miller, does not include an order, a directive, or instruction for me to enter and complete the Community Supervision Program, and that is determinative because my judicially imposed sentence on these indictments does not include a judicial order for me to complete the program." (ROA at Pg 42 Tr. pg. 4, lines 7-17)

The Appellant's argument is derivative of the sound judicial wisdom of the Honorable Sonia Sotomayor when she, along with other judicial panelists, applied a

principle of law enunciated by the United States Supreme Court, and articulated in the matter of *Earley v. Murray*,[13]: (1) the only sentence known to the law is the sentence or judgment entered upon the records of the court, and (2) the judgment of the court establishes a defendant's sentence, and that sentence may not be increased by an administrator's amendment.

Without first reviewing or considering the afore-said principles of law established by the United States Supreme Court, and articulated by the United States Court of Appeals, Judge Addy gave a very cursory[14] response to the Appellant's argument stating "Mr. Booker, I'll note your argument. To the extent that the Court needs to rule on the question of whether the director of triple 'P' had authority to put you on community supervision, the Court will conclude for purposes of your appeal, [] that he did possess that authority by virtue of South Carolina law." (ROA at Pg.46, Tr. pg. 8, lines 12-18).

When Judge Addy asked whether there was a response to anything that had been presented by the Appellant, counsel for the SCDPPPS responded, "[n]o, Your Honor. I would agree with your position that 24-21-560 does confer that authority

[13] Earley v. Murray, 451 F.3d 71, (2nd. Cir. 2006), rehearing denied Earley v. Murray, 462 f.3d. 147 (2nd. Cir. 2006).
[14] Rendering "cursory" decisions defies the Judge's Oath which pledges, *inter alia*, to rule after *considerate deliberation.*

to the director and the Circuit Court maintains jurisdiction to order any payment." (ROA at Pg. 46, Tr. pg. 8, lines 21-24).

The pertinent language of S.C. Code of Laws, Section 24-21-560(A) reads: "***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.***"

A **cursory** analysis of the above-quoted *italicized* statutory language could lead one to conclude that the CSP is apart of a defendant's sentence by operation of law AND that the director of probation, parole, and pardon services possesses the authority "by virtue of South Carolina law" to place a defendant into the CSP. However, after "***considerate deliberation***" of controlling principles of law, one will come to realize that: (1) only a judge can impose a sentence; (2) a judicially-imposed sentence includes only those elements explicitly ordered by the sentencing judge and entered upon the records of the court; and (3) "the only sentence known to the law is the sentence imposed by the judge; any additional penalty added to that sentence by another authority is invalid, regardless of its source, origin, or authority until the judge personally amends the sentence. [...], a sentence cannot contain elements that were not part of a judge's pronouncement. The fact that [a state] 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." Earley, 462 F.3d. at 149.

Any argument by the State that the CSP term was "imposed" at the Appellant's sentencing because it was always part of the "no parole offense" sentence handed down by Judge Miller is simply incorrect. Whatever conceptualization the State has about the function of South Carolina law section 24-21-560, it "cannot operate to undermine the protections contained in the Federal Constitution. And as *Wampler* requires the custodial terms of sentences to be explicitly imposed by a judge, any practice to the contrary is simply unconstitutional and cannot be upheld." *Id.*, *Earley*, 462 F.3d at 149.

In support of his argument that Judge Addy committed an error of law in concluding that the director of probation, parole, and pardon services had authority by virtue of South Carolina law to place the Appellant into the CSP, the Appellant hereby adopts and incorporates herein by reference the sound judicial wisdom of the United States Supreme Court in *Hill v. United States ex rel. Wampler*, 298 U.S. 460, (1936) and of the Unites States Court of Appeals in *Earley v. Murray*, 451 F.3d 475 (2nd. Cir. 2006).

3. ALLOWING THE DIRECTOR OF PROBATION TO ALTER THE TERMS OF JUDICIALLY IMPOSED SENTENCES VIOLATES THE SEPARATION OF POWERS DOCTRINE.

Judge Addy and counsel for the SCDPPPS apparently believed that S.C. Code of Laws, section 24-21-560 vested the director of probation, parole, and pardon services with the authority to impose the CSP upon criminal defendants as part of their sentences. Their belief, however, is simply misplaced and incorrect.

The separation of powers doctrine is a core principle in the tripartite design of our government. "The Framers perceived that `[t]he accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, or few or many, and ***586** whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.'" *Immigration and Naturalization Service v. Chadha,* 462 U.S. 919, 960, 103 S. Ct. 2764, 2789, 77 L. Ed. 2d 317 (1983) (Powell, J., concurring in the judgment) (quoting *The Federalist* No. 47, p. 324 (J. Cooke ed. 1961) (J. Madison)). Only by diffusing governmental authority among the three branches could the Framers safeguard against the concentration of abusive power in one or two of the coordinate components. Though the Constitution allocates separate authority to each of the branches, the boundaries among the

branches were intentionally imprecisely drawn: "That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power." *Bowsher v. Synar,* 478 U.S. 714, 722, 106 S. Ct. 3181, 3187, 92 L. Ed. 2d 583 (1986). Though each branch need not be isolated from its co-equals, *Nixon v. Administrator of General Services,* 433 U.S. 425, 443, 97 S. Ct. 2777, 2790, 53 L. Ed. 2d 867 (1977), courts have not been hesitant to enforce the separation of powers doctrine "where one branch has impaired or sought to assume a power central to another branch ...." *Chadha,* 462 U.S. at 962, 103 S. Ct. at 2790 (Powell, J., concurring in the judgment). Functionally, separation of powers transgressions occurs in either of two ways. A violation results when one branch assumes a function more properly allocated to another, *see Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 587-89, 72 S. Ct. 863, 866-67, 96 L. Ed. 1153 (1952), or when one branch unduly impairs the performance of another branch's constitutionally-designated function. *See Administrator of General Services,* 433 U.S. at 443, 97 S. Ct. at 2790; *United States v. Nixon,* 418 U.S. 683, 711-12, 94 S. Ct. 3090, 3109-10, 41 L. Ed. 2d 1039 (1974). Before scrutinizing S.C. Code of Laws, Section 24-21-560 under these dual lenses, the Court must ascertain whether the

nature and function of the administrative order of the SCDPPPS imposing the CSP upon criminal defendants is inherently executive, legislative, or judicial.

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 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".* (ROA at Pg.1)

The "**Community Supervision Program Certificate**" (i.e., **SCDPPPS Form 1150**) constitutes an administrative **Order** that the Appellant enter and complete the CSP.

The statute in question provides that "***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.*" (Section 24-21-560(A)) (emphasis added).

A judge is the only member of the branch of government authorized to impose a sentence. See *Earley v. Murray*, 451 F.3d 475 (2nd Cir. 2006) ("The imposition of a sentence is a judicial act; only a judge can do it."); *State v. Archie*, 470 S.E.2d 380 (S.C. 1996) ("the imposition of sentences is a judicial function.").

The above-quoted language of the statute contemplates a judge imposing a term of imprisonment, and a requirement for the completion of the CSP, and that the CSP be operated by SCDPPPS.

The state Supreme Court, in *Major v. SCDPPPS*, observed that "a court's final judgment in a criminal case is the pronouncement of the sentence[.]" *See, Berman v. United States,* 302 U.S. 211 (1937) ("Final judgment in a criminal case means the sentence. The sentence is the judgment.") (Citing *Miller v. Aderhold*, 288 U. S. 206, and *Hill v. Wampler*, 298 U.S.460). A judicially imposed sentence is final and may not be modified by another branch. *Hill v. Wampler, supra*; *see also, United States v. Johnson,* 48 F.3d 808 (4th Cir. 1995) ("The imposition of a sentence, including the terms and conditions of supervised release, is a core judicial function that cannot be delegated."). Therefore, to allow the director of the SCDPPPS to modify or alter the terms and conditions of a final judgment/sentence, by and through an administrative order imposing terms and conditions not "pronounced" as part of a judicially imposed sentence, violates not only a defendant's right to due process of law but it violates the separation of powers doctrine because it permits a member of the executive branch to perform a function more properly allocated to the judicial branch. *See, Archie, supra* (finding that the SCDPPPS' administrative imposition of conditions not imposed by judge in original sentence violates separation of powers doctrine).

Even if it were not violative of the separation of powers doctrine, it is certainly violative of a defendant's right of due process to hear from the sentencing authority

all of the terms and condition of the defendant's custodial sentence. See, e.g., People v. Boyd, 12 NY3d 390 (2009) ("a criminal defendant has a right to hear directly from the court its pronouncement as to what the entire sentence encompasses.").

In sum, to the extent that the statutory section in question vests the SCDPPPS director with authority to administratively impose the CSP upon criminal defendants *in absence a judicial order for the same* it is unconstitutional, as it violates the separation of powers doctrine established by the Constitution of South Carolina in Article 1, Section 8. *See, State v. Stevens*, 373 S.C. 595 (S.C. 2007).

As argued above, and as recognized by this Court recognized in *State v. Archie, supra*, the imposition of sentences is a judicial function. The exercise of this function by the SCDPPPS director, a member of the executive branch of the government, violates the doctrine of separation of powers.

By administratively imposing post-release supervision on defendants *in the absence of a judicial order for the same*, the SCDPPPS have unlawfully supervised over sixteen thousand defendants, and have unlawfully collected in excess of twenty million dollars in supervision fees from those defendants, since 1996 to 2022. That unlawful supervision, and unlawful collection of supervision fees, unlawfully restricted theses defendants' liberty in violation of their civil rights and it unlawfully

restricted their ability to vote in violation of their voting rights.

The Appellant, having graduated *with distinction*, is a certified legal assistant/paralegal who is very intelligent and who studies law extensively. After being told by the prison classification officer in September 2008 that he would be required to participate in the community supervision program upon his release, the Appellant, knowing that he had not been informed of a mandatory supervised release component at the time of his plea, began to thoroughly research the law and discovered: (1) that every court to consider the question of whether post-release supervision is a direct consequence of a guilty plea all agree that is and that failure to inform requires vacatur of the plea[15], except for South Carolina Supreme Court (the *per curiam* opinion of *Jackson v. State, supra*, which essentially holds that a mandatory term of post-release supervision is merely a collateral consequence of sentencing, is an "extreme outlier" compared to precedent in other jurisdictions); and (2) that administrative imposition of post-release supervision on a defendant, by a member of the executive branch, in absence of a judicial order for such supervision,

[15] As one court explained, a harmless error analysis is inappropriate when a evaluating a claim of "failure to inform of a direct consequence of mandatory post-release supervision" *See People v. Boyd*, 12 NY3d at 397 (Pigott, J.) (it is incorrect to believe that the question turns on whether 'the defendant got the full benefit of her plea bargain' but rather such a violation requires vacatur of the plea because the court violated the defendant's due process rights, not the defendant's sentencing expectations. Therefore, we vacated the defendants' involuntary guilty pleas to remedy the constitutional violations. Neither the Court nor the Legislature can require a defendant to accept a plea that was unconstitutionally obtained.)

constitutes a violation of the separation of powers doctrine (*see State v. Stevens, supra*) and violates the defendants due process rights (*Earley Murray, supra; and Hill v. Wampler, Supra*). Therefore, the Appellant sought to obtain post-conviction relief from his involuntary guilty plea by filing for PCR, pursuant to Section 17-27-45(C) of S.C. Code of Laws, within one month of learning from the prison official that he would be subjected to mandatory supervision upon his release. See, PCR Application filed October 17, 2008 (2008-CP-23-07865). The State made its Return to that PCR application arguing, *inter alia*, that the Appellant's claim was not ripe for judicial review because the Appellant was not yet participating in the CSP. The judicial member who presided over that proceeding was Circuit Judge John C. Few who is now an associate justice member of South Carolina Supreme Court. Judge Few, *in applying all of his judicial knowledge*, agreed with every argument the State made against the Appellant even including the State's argument that the Appellant's claim of Involuntary Guilty Plea was not ripe because the Appellant was not yet participating in the community supervision program. By concluding that the Appellant's claim (of Involuntary Guilty plea) was not ripe, Judge Few's judicial wisdom informed him that the issue was contingent, hypothetical, or abstract.[16] The

[16] In *Jowers v. SCDHEC*, 815 S.E.2d 446 (S.C. 2018) the state Supreme Court stated: "We have explained ripeness by defining what is not ripe, stating 'an issue that is contingent, hypothetical, or abstract is not ripe for judicial review.'" *Id.*

nature of that "judicial wisdom" emanates from South Carolina judges who are used to making ***cursory analysis*** of matters before them, in contravention of their judicial oath to ***rule only after considerate deliberation*** of the matter(s) before them. Had Judge Few adhered to his judicial oath and gave the matter considerate deliberation, he would not have found the matter to be unripe for judicial review. Regardless of whether the Appellant was participating in the CSP, the CSP requirement applied to him because of his conviction of a "no parole offense" and thus, he had standing to challenge the voluntariness of his plea based upon that fact alone which was evident by the "ripeness" of the *Jackson v. State, supra* case itself. Nevertheless, Judge Few's erroneous conclusion-which was upheld by the South Carolina Supreme Court-that the Appellant's claim was not then ripe for judicial review because he was not yet participating in the CSP helped the Appellant preserve the issue. And whereas the Appellant was forced to endure the unlawful supervision, and unlawful collection of supervision fees, the issue is now ripe for judicial review.

Not only as a certified legal assistant/paralegal but more so as an honorary member of REFORM Alliance, the Appellant stands firm against *unjust* criminal justice and against abuse of governmental power by those who rule by law, and not by the rule of law. By absolutely refusing to pay for the unlawful supervision of himself, the Appellant, acting as an honorary member of REFORM Alliance, stood-

up against the *unjust* criminal justice system in the state of South Carolina and, it is as a certified legal assistant/paralegal, that the Appellant litigate this criminal appeal as a catalyst for himself and as a voice for the thousands upon thousands of other criminal defendants who have been unlawfully supervised-during which they were disenfranchised-by the state of South Carolina, and who had hundreds and thousands of dollars (which added up to over twenty million dollars) unlawfully collected from them-by the state of South Carolina.

By making this appeal, the Appellant seeks court recognition that all criminal defendants affected by the ruling in this case who wish to vacate their unconstitutionally obtained guilty plea may seek vacatur of the same, and the full return *with interest* to every person affected of all monies unlawfully collected from him or her as a result of the unlawful supervision of that person. The Appellant will not cease in this quest until these results are achieved.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court, vacate the Appellant's guilty plea, and order the return of the supervision fees with interest.

Respectfully Submitted,

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/s/ Patrick Lee Booker

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APPELLANT PRO SE

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