

Gary L. Hayes #263985
Walden Corr.Inst. W-3
4340 Broad River Road
Columbia,S.C. 29210

March 27,2013

Honorable Brenda F. Shealy
Chief Deputy Clerk
S.C. Supreme Court
P.O. Box 11330
Columbia,S.C. 29211

RECEIVED

APR 01 2013

S.C. SUPREME COURT

Re: Case No.: 2012-CP-22-1167.

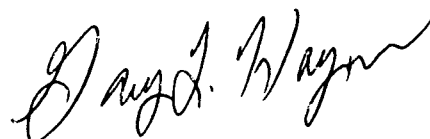
Dear Ms. Shealy,

Please find enclosed with this letter a copy of my brief to be filed with your office. I am also including a self-addressed envelope and an extra copy of the cover sheet to my brief for your office to clock stamp and return to me for my record if you would please do so.

As of today's date I have not received a copy of the final order of dismissal in my case. I am writing to the clerk of court in the county my case originated to request a copy if one has been filed. The conditional order of dismissal I am sending your office was issued on February 8,2013, I was served a copy of the order of dismissal on March 14,2013. When I do receive a final order of dismissal, I will send your office a copy at once.

Thank you in advance for your time to read my letter and your assistance in my case is appreciated.

Sincerely,



STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL TO GEORGETOWN COUNTY

RECEIVED

Case No.: 2012-CP-22-1167

APR 01 2013

S.C. SUPREME COURT

Benjamin H. Culbertson, Presiding Judge

PETITIONER'S INITIAL BRIEF ON APPEAL

Attorney of Record:

Tyson Andrew Johnson, Sr.
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Petitioner pro se:

Gary L. Hayes #263985
Walden Corr. Inst. W-3
4340 Broad River Road
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Petitioner (Hayes) makes his INITIAL BRIEF ON APPEAL in case No. 2010-CP-22-1167.

HISTORY OF CASE

Hayes was arrested in January 1998 and remained in jail until his trial in January 2000 where he was found guilty of voluntary manslaughter and sentenced to fifteen (15) years.

Hayes was released on the Community Supervision Program (CSP) October 1, 2010. On August 30, 2012, Hayes was sentenced to one (1) year in the Department of Corrections for a community supervision violation. See attached community supervision revocation order.

On October 23, 2012, Hayes filed an Application for Post-Conviction Relief (PCR) alleging the one year sentence for the community supervision violation extends his incarceration beyond the fifteen years he was sentenced originally by the circuit court.

On March 14, 2013, Hayes was served with a conditional order of dismissal in his PCR denying relief signed by the Honorable Benjamin H. Culbertson.

ALLEGATIONS

Hayes alleges the one year sentence for community supervision violation extends his sentence beyond the fifteen years he was originally sentenced in violation of S.C. Code §24-21-560, State v McGrier, 378 S.C. 320, 663 S.E.2d 15(2008) and State v. Picklesimer 388 S.C. 264, 695 S.E.2d 845(2010).

DISCUSSION

Hayes was arrested in January 1998 and remained in jail until his trial in January 2000. Hayes was given credit for two(2) years jail time he served awaiting trial in accordance with S.C.Code §24-13-40. See attached sentencing sheet. With two years jail time credit Hayes' fifteen year sentence expires in January 2013.

In State v. McGrier, the Supreme Court held S.C.Code §24-21-560(D)2007 we now read this language as limiting the total amount of time an inmate could be incarcerated after a CSP revocation to be the length of the remaining balance of the sentence for the no parole offense.

In State v. Picklesimer, the Supreme Court held the original sentence as referenced in statute governing revocation of community supervision and the maximum amount of time a prisoner could be required to serve after revocation, included the suspended and unsuspended portions of a circuit court's sentence; therefore, pursuant to statute, when a circuit court was faced with a defendant's violation of the Department of Probation, Parole and Pardon Services' community supervision program CSP or normal probationary term, the court could not revoke and impose a term of the further incarceration, nor lengthen the term of the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence.

On February 5, 2013, the State submitted a revised order of dismissal "after a Picklesimer review." The State then alleges 406 days were added to Hayes' sentence because he absconded super-

vision. The State does not mention who or what entity it is that "extended Hayes' sentence" nor their legal authority to do so.

The McGrier court and the Picklesimer court both specifically state a prisoner's term of incarceration after the revocation of community supervision could not extend beyond the term of the original sentence.

CONCLUSION

Hayes' one year sentence for community supervision revocation should be revoked and he be released from incarceration.

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STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE

VS.

Gary Leroy Hayes

AKA:

Race: W

Sex: M

DOB: 6-13-55

Age: _____

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

26398

98-GS-22-839

A/W#: F757213

Date of Offense: 1-12-98

S.C. Code § : _____

CDR Code #: 011116

SENTENCE

PLEA

TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Voluntary manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 012-1117

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time and for 23, 1998

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 - Assessments-100%..... \$ _____

§ 14-1-211 - Surcharge..... \$ 106.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$ _____

County (3%)..... \$ 3.00

TOTAL..... \$ 103.00

Clerk of Court/Deputy Clerk Bonnie Goude

Court Reporter: Grace Huxley

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

prmts. of \$ 25.00 beginning 30 days after

\$ _____ paid to Public Defender Fund. Release

Other: _____

PRESIDING JUDGE Gloria P. King

Judge Code: 11017

Sentence Date: Jan 28, 1998

State of South Carolina

No. 09 -GS- 22 - 839 1
Court

County of Georgetown

State

Community Supervision

-VS-

REVOCATION ORDER

Defendant Gary Leroy Hayes

SID# 01300776

SCDC# or DOB 263985

This matter was brought before me on the 30th day of August, 2012, pursuant to warrant/~~citation~~ (strike one) charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions.

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of _____ days _____ months One (1) year (total may not exceed one (1) year).

This 30th day of August, 2012
Georgetown, SC

[Signature] 2012
Presiding Judge
15th Judicial Circuit

I have received a copy of this order.

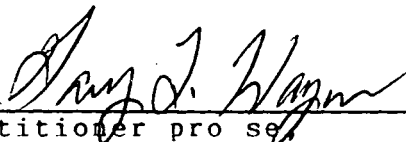
Offender's Signature	Offender's Date
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CERTIFICATE OF SERVICE

I, Gary L. Hayes, certify that on this date I served a true and correct copy of the foregoing document(s) on the below listed individual(s) by placing the same in the U.S. mail postage pre-paid and sent to their last known address as follows:

Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Tyson A. Johnson, Esq.
Asst. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

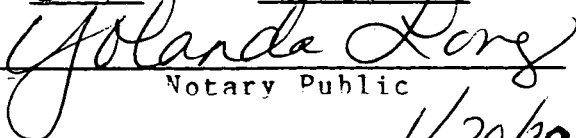


Petitioner pro se

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SWORN to and subscribed before me

this 27th day of March, 2013



Notary Public

My commission expires: 1/20/2022