

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

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S.C. Supreme Court

2013-001326

GARY L. HAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in failing to hold a hearing in order to entertain petitioner's allegation that his community supervision violation resulted in a revocation sentence that exceeded the end term of his original prison sentence because this violated S.C. Code Ann. §24-21-560(D).

STATEMENT

Petitioner Gary Leroy Hayes was found guilty of voluntary manslaughter per jury trial held during the January 2000 term of the Georgetown County General Sessions Court before Judge Howard P. King. Petitioner was sentenced to imprisonment for a period of fifteen years. App. 10. David Hood represented petitioner at trial. Petitioner appealed, but his conviction and sentence were affirmed. See State v. Hayes, Op. No. 2001-UP-415 (S.C. Ct. App. filed September 27, 2001). Petitioner was represented on direct appeal by Robert Pachak.

Petitioner was admitted to the community supervision program on October 1, 2010, but on August 30, 2012, Judge John C. Hayes revoked petitioner's community supervision term and sentenced him to imprisonment for a period of one year. App. 28.

On October 26, 2012, petitioner filed a PCR application with the Georgetown County Office of the Clerk of Court. App. 1-9. The respondent filed a return and motion to dismiss dated December 12, 2012, on the grounds that the action was successive and untimely filed. App. 10-15.

On February 20, 2013, Judge Benjamin H. Culbertson filed a Conditional Order of Dismissal denying PCR relief to petitioner. App. 17-20. On May 21, 2013, Judge Culbertson issued a Final Order denying PCR relief to petitioner. App 22-24.

Petitioner appealed Judge Culbertson's Final Order. This petition follows.

ARGUMENT

The PCR judge erred in failing to hold a hearing in order to entertain petitioner's allegation that his community supervision violation resulted in a revocation sentence that exceeded the end term of his original prison sentence because this violated S.C. Code Ann. §24-21-560(D).

Petitioner was released to a community supervision program on October 1, 2010. On May 20, 2011, an arrest warrant was issued against petitioner for a community service program violation. The revocation that resulted due to this violation landed petitioner back in prison for a one-year term that began on August 30, 2012. Petitioner argued that this one-year sentence extended his original sentence term beyond the January 2013 end date. App. 18-19; App. 7-8. Petitioner complained that since his original sentence end date had expired, the one-year prison sentence he received via the revocation based on the community supervision violation meant that he has been detained unlawfully in violation of Picklesimer.¹ App. 7.

The respondent contended that petitioner's prison sentence that arose from a sentencing revocation did not violate Picklesimer. App. 10-15.

In the Conditional Order of Dismissal and Final Order issued in the case, the PCR judge denied petitioner's allegation that a community supervision violation that resulted in a revocation resulting in a one-year prison sentence translated into an incarceration service time that extended beyond the expiration date of his original prison sentence. App. 17-20; App. 22-24.

In State v. Picklesimer, 388 S.C. 264, 695 S.E. 2d 845 (2010), the Court held that the total amount of time that an inmate can be incarcerated per a revoked prison sentence via a community supervision violation cannot exceed the length of the remaining balance of his original prison sentence. Furthermore, the Picklesimer Court held that the maximum aggregate amount of time a

¹ State v. Picklesimer, 388 S.C. 264, 695 S.E. 2nd 845 (2010).

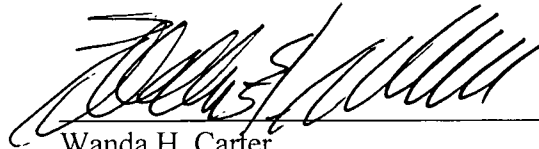
prisoner may be required to serve when sentenced for successive revocations cannot exceed the amount of time equal to the length of incarceration imposed on his original prison sentence.

Here, it appears that petitioner's community supervision violation resulted in a revocation sentence that exceeded the end date of his original sentence, but the respondent argued to the contrary that no Picklesimer violation occurred in the case. Clearly, petitioner has raised a question of fact regarding a violation that is not refuted by the record and should be resolved by way of an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 305 S.E. 2d 247 (1983).

CONCLUSION

Based on the foregoing argument, petitioner requests that an evidentiary hearing be held on the issue raised in this petition.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GEORGETOWN COUNTY
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

GARY L. HAYES,

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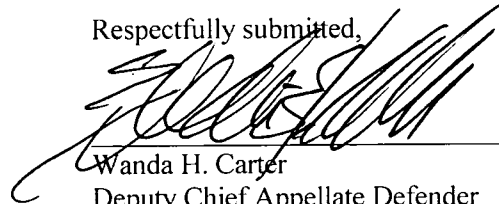
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gary L. Hayes states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on na. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Gary L. Hayes.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of November, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

GARY L. HAYES,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

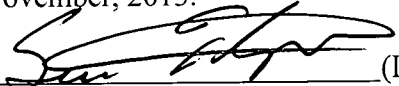
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Tyson Andrew Johnson, Sr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Gary L. Hayes, at 114 Pinecreek Court Ext, Greenville, SC 29605, this 20th day of November, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of November, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.