

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Warrant Numbers: 2024A4010202542-544;  
2024A4010600044-45

The State of South Carolina )

vs. )

Robert Southard, )

Defendant. )

MOTION FOR DISCHARGE IN  
ACCORDANCE WITH § 17-23-90

RECEIVED

FEB 23 2026

ATTN: Morgan Monroe, Fifth Circuit Solicitor's Office SC Court of Appeals

The Defendant, Robert Southard, by and through his undersigned counsel, hereby moves for this Court to order his discharge from the custody of the Alvin S. Glenn Detention Center. As set forth below, Mr. Southard asserted his statutory right to a speedy trial and he has not been tried in the statutorily required timeframe pursuant to S.C. Code § 17-23-90. Specifically, Mr. Southard has not been tried within two statutory terms since his demand for a speedy trial under the S.C. Code § 17-23-90. He is therefore entitled to discharge from custody as a matter of law.

#### PROCEDURAL HISTORY

Mr. Southard was arrested on May 15, 2024 and charged in the above-captioned case. On May 23, 2024, Mr. Southard appeared for his initial bond hearing in the Court of General Sessions. At that time, Mr. Southard's bond was denied and he asserted his statutory right to be tried within two terms of court in accordance with S.C. Code § 17-23-90. See Attachment A (transcript from May 23, 2024). On September 11, 2024, Mr. Southard again asserted his right to trial or discharge within two terms of court in accordance with S.C. Code § 17-23-90. See Attachment B (transcript from September 11, 2024). As of this filing, Mr. Southard has not been tried, three terms of court have now passed, and he is entitled to discharge by operation of law.

#### LAW AND ARGUMENT

South Carolina provides a statutory right of release from pre-trial detention when the accused invokes his right to a speedy trial and his trial is not held within two statutory terms of court, under S.C. Code § 17-23-90. South Carolina Code §17-23-90 provides, in relevant part:

And if any person committed as foresaid, upon his prayer or petition in open court the first week of the term to be brought to his trial, shall not be indicted and tried the second term after his commitment or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

S.C. Code Ann. § 17-23-90 (2014).

Therefore, our Supreme Court holds that, “[s]ection 17-23-90 provides for discharge from imprisonment when [1] a person is committed for a felony, [2] demands to be brought to trial, and [3] is not indicted or<sup>1</sup> tried by the second term following his commitment.” *State v. Campbell*, 277 S.C. 408, 409 (1982). “[T]he statutory reference to discharge [is] interpreted as requiring the prisoner ‘...be as unrestrained as if upon his trial he was acquitted.’” *Id.* (quoting *State v. Fasket*, 39 S.C.L. (5 Rich.) 255, 257 (1852)). Therefore, the statute does not provide for judicial discretion, as exists in a bail hearing—only enforcement of the law. *State v. Fasket*, 39 S.C.L. 255, 256 (S.C. App. L. 1852) (“the mandate for the discharge of the prisoner is peremptory; no discretionary power is reserved to the judge to require bail on the discharge of the prisoner.”). This has been the function of the right for hundreds of years. *State v. Hunsberger*, 418 S.C. 335, 341 n.3 (2016) (“This statute is derived from Section 7 of the Habeas Corpus Act of 1679... [it] provides that, upon demand, a prisoner who is not indicted or tried by the second term following the demand be released without bail.”)<sup>2</sup>

The requisite “terms of court” have passed for Mr. Southard, thus requiring his discharge. When South Carolina Code § 17-23-90 refers to a “term” of court, it refers to the statutory terms of court set by the General Assembly. In *Ex Parte Attardo*, 272 S.C. 1 (1978), the Supreme Court held that 17-23-90 applies “to the statutory terms of court, not to the special terms of court.” *Attardo* at 2.

---

<sup>1</sup> The Court’s use of the term “or” is likely a scrivener’s error as the statute expressly requires that the accused be “indicted *and* tried” once the right is invoked. See S.C. Code Ann. § 17-23-90 (emphasis added); see also *State v. Williams*, 35 S.C. 160 (1892) (“The *second* provision of the section, does...give the defendant the right to discharge...where, upon his petition to be brought to trial, he ‘shall not be indicted and tried the second term after his commitment.’”). Regardless, Mr. Southard has been neither tried nor indicted within the two—now three—terms of court following his demand for a speedy trial upon his commitment.

<sup>2</sup> Our legislature first codified the right in the 19<sup>th</sup> Century, under Chapter XCII of Habeas Corpus. G. S. § 2323. Nearly 100 years later, the statute was moved to Title 17—Criminal Procedure. While the statute has been renamed, it has continually provided that if an individual asserted his right to a speedy trial in open court, “he shall be discharged from his imprisonment” if not tried within two terms of court. 1 Statutes at Large 117, 119–120.

Statutory terms fall under the legislature's power and obligation in orchestrating our court system, and these terms provide a set and consistent measurement for the right. *See* S.C. Const. art. V § 4 ("Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly."). In the Fifth Judicial Circuit:

The court of general sessions for Richland County shall be held at Columbia on the second Monday in January for two weeks, on the second Monday in April for two weeks, on the third Monday in June for two weeks, on the Tuesday following the first Monday in September for three weeks and on the second Monday in December for two weeks.

S.C. Code Ann. § 14-5-670 (2017). Mr. Southard first asserted his statutory right to a speedy trial at his earliest opportunity in open court on May 23, 2024, upon his commitment to the jail by the Court of General Sessions via bond denial. Attachment A. Mr. Southard again asserted his right on September 11, 2024. Attachment B. Since his initial assertion, three statutory terms of court have passed (June, September, and December). Once the first passed, Mr. Southard was entitled to bail if not indicted under the statute. S.C. Code § 17-23-90 (if defendant not indicted in next term following commitment and invocation of right, judge shall set defendant at liberty upon bail). He remains unindicted. However, due to Mr. Southard's financial status, he has continued to assert his right to trial or discharge, and has waited for his wife to be able to do the same.<sup>3</sup> Three statutory terms of court have now passed without trial or indictment. He is entitled to discharge.

In moving for discharge under the statute, Mr. Southard is not requesting that the Court engage in a balancing test or wrestle with a matter of discretion. Under the statute, "the mandate for the discharge of the prisoner is peremptory; no discretionary power is reserved to the judge to require bail on the discharge of the prisoner." *State v. Fasket*, 39 S.C.L. 255, 256 (S.C. App. L. 1852); *see also State v. Campbell*, 277 S.C. 408, 409 (1976) ("the prisoner should be released *without bail*, not discharged from further prosecution.") (emphasis added). Therefore, Mr. Southard merely asks that the Court enforce the law.

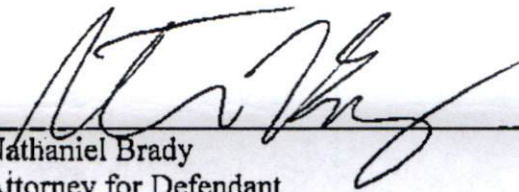
---

<sup>3</sup> Counsel for Mrs. Southard has indicated that she intends to join in this motion, and that she asserted her statutory right to a speedy trial in August of 2024, at her first appearance in front of a judge for bond.

**CONCLUSION**

For the reasons set forth above, and any others that may appear to this Honorable Court, Mr. Southard moves for his discharge from custody.

Respectfully submitted,



---

Nathaniel Brady  
Attorney for Defendant  
Richland County Public Defender's Office  
P.O. Box 192  
Columbia, South Carolina 29202  
(803) 765-2592

Columbia, South Carolina

This 3 day of January, 2025

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NUMBER \_\_\_\_\_

WARRANT NUMBER 2024 A4010202542, -43, -44

State of South Carolina,

2024 A4010600044, -45

vs.

ORDER

Robert Southard

Defendant.

CHARGE(S): CRIMINAL sexual conduct with minor - First degree (two counts),  
unlawfully place child at risk of or cause harm (three counts)

This matter comes before the Court on February 3, 2025.

Present at the hearing were Cydney Clark, representing the Defendant, and Morgan Monroe representing the State.

The following motions were

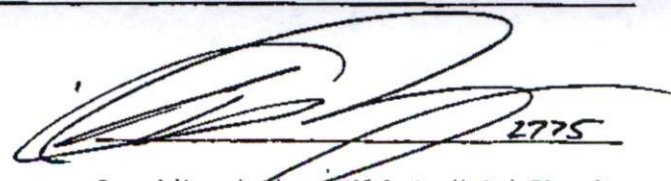
presented: Defense's motion for discharge.

Attached pertinent documents were submitted by the State/Defendant and were made a part of the record.

The Court determined:

Defense's motion is denied.

IT IS SO ORDERED

  
2775

Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina

This 14<sup>th</sup> day of February 2025

JEANETTE W. MORRIS  
C.O.R., G.S., & F.C.

2025 FEB 18 PM 4:16

FILED  
RICHLAND COUNTY

**RECEIVED**

FEB 23 2026

SC Court of Appeals