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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
BEFORE THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

Appellate Case No._____

Charles E. Carpenter #181783, ...Petitioner,

vs.

Joel Anderson, Interim Director,
South Carolina Department of Corrections .....Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner Charles E. Carpenter (hereafter "Carpenter") seeks a Writ of Habeas Corpus from this Honorable Court in its original jurisdiction, pursuant to South Carolina Constitution Article IV, Section 5, establishing Carpenter's immediate release from the South Carolina Department of Corrections. Because Carpenter has exhausted the regular course of Post Conviction Relief (PCR) claims and appeals in his case, a writ of habeas corpus is this Court's original jurisdiction is appropriate.

JURISDICTION

Habeas corpus relief is available in this Court's original jurisdiction under the South Carolina Constitution. S.C. Const. art. I, § 18 & art. V, § 5; see also S.C. Code § 14-3-310 (1976). "Notwithstanding the exhaustion of appellate review, including all direct appeals and PCR, habeas corpus relief remains available to prisoners in South Carolina." *Moore v. Stirling*, 436 S.C. 207, 218, 871 S.E.2d 423, 429 (2022) (quoting *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008)).

STATEMENT OF THE CASE

A. Plea Agreement and Initial Sentencing

Carpenter was arrested on or about November 27, 1989, and charged with trafficking in marijuana (Count 1: 90-GS-47-5001) and trafficking in cocaine (Count 2: 90-GS-47-5002) whereafter he was later sentenced to confinement for a period of twenty-five (25) years for trafficking in cocaine and an additional twenty-five (25) years for trafficking in marijuana. On April 7, 1990, Carpenter signed a plea agreement with the State. **Exhibit A**. The Honorable Edward W. Cottingham accepted Carpenter's plea agreement on April 7, 1990, but deferred sentencing until June 4, 1990. Therein Carpenter agreed to plead guilty to one (1) count of

trafficking in marijuana and one (1) count of trafficking in cocaine. In exchange for his plea, the State agreed to recommend that Carpenter's sentences be served concurrently on the condition that Carpenter provided information to the State and cooperated in investigations.

Prior to entry of the plea, the prosecutor stated, "If I could also ask that the Defendant understand that this is a mandatory term of imprisonment, that it is a mandatory minimum, the sentence cannot be suspended, probation can't be granted and it is a sentence that does not have eligibility for parole until the passage of 25 years." Carpenter's counsel indicated Carpenter's understanding of that term as part of the plea. (April 7, 1990, Plea Tr. page 20, lines 1-7). Judge Cottingham concluded the entry of the plea by stating that "I am going to abide by the plea agreement. [Carpenter] is entitled to that, and I will do that." (*Id.* at lines 14-15).

On June 4, 1990, Judge Cottingham sentenced Carpenter to the minimum twenty-five (25) years on Count 2 (90-GS-47-5002), trafficking in cocaine to run concurrently with the federal firearm violation sentence that Carpenter was currently serving. **Exhibit B**. During this hearing, based on information provided by the State, Judge Cottingham determined that there was probable cause to conduct a "full in-depth" evidentiary hearing at a later date on the question of whether Carpenter had failed to comply with the conditions of the plea agreement. (June 4, 1990, Tr. p. 16, lines 13-15). Judge Cottingham informed Carpenter that if he determined that Carpenter had in fact complied with the conditions of the plea agreement, Judge Cottingham would honor the plea agreement and impose a sentence on Count 1 (90-GS-47-5001), trafficking in marijuana, to run concurrently with his sentence on Count 2. Judge Cottingham further informed Carpenter that if he did not comply with the terms of his plea agreement, he would "*change* his sentence to speak to his lack of cooperation." (June 4, 1990, Tr. p. 10, line 24) (emphasis added). Carpenter's counsel

objected to the bifurcation of sentencing. Counsel's position was that the entire sentencing under the plea agreement had to be done at the same time. (June 4, 1990, Tr. p. 16, lines 20 –25).

B. <u>Bifurcated Sentencing Hearing</u>

On August 9, 1990, Judge Cottingham conducted a second hearing. Carpenter again objected to the second hearing, renewing an earlier objection made in June, all of which was acknowledged by the Court. (Aug. 9, 1990, Tr. p. 4, lines 18-24). The trial judge characterized the proceedings which were occurring as a hearing on "contempt in disobedience of the plea agreement." (*Id*. at p. 144, lines 22-24). He also characterized the inquiry which was occurring as a determination of whether Carpenter had "breached his agreement." (*Id*. at p. 144, lines 14 – 25).

Without a criminal charge pending against Carpenter, without advising Carpenter of his rights to a jury trial or other constitutional protections, and notwithstanding the existence of his plea already having been entered and accepted and a sentencing hearing already concluded, the trial judge proceeded to take testimony from witnesses to determine whether Carpenter had complied with his obligations under the plea agreement. *Id*.

Carpenter's Counsel objected and correctly pointed out that there were no additional charges brought against Carpenter, and the evidence to be presented had to do with matters which occurred after the plea agreement had been entered and accepted, and therefore were not properly up for consideration. Carpenter's counsel astutely observed "There is a clean way for the State to accomplish what they're attempting to do. This is a muddy way, but I guess they're entitled to proceed whichever way they want to proceed." (Aug. 9, 1990, Tr. p. 10, lines 9-13).

After hearing from witnesses, Judge Cottingham ultimately found that Carpenter failed to cooperate and substantially comply with the terms of the plea agreement. As a result, Judge Cottingham "enhanced" Carpenter's sentence by sentencing Carpenter to 25 years on Count 1 to run consecutively to the previously imposed 25-year sentence for Count 2. **Exhibit C**. Judge Cottingham made no determination or statement as to the burden of proof or persuasion to which he subjected the evidence he considered, or the weight of the evidence that he relied upon to declare that Carpenter's sentence should be "enhanced." (Aug. Tr. p. 144, line 12).

C. <u>Modification of Sentence</u>

Upon his remand to the custody of SCDC in 1991, SCDC determined Carpenter's sentence to be a total of 50 years, and it recorded in Carpenter's "Conviction Summary" that Carpenter's "max-out" or projected release date for 1990-GS-47-5001 was October 4, 2003, while his "max-out" date on 1990-GS-47-5002 was November 23, 2016. **Exhibit D**. From 1991 until 2011, Carpenter's published max-out dates fluctuated from July 7, 2025, to July 4, 2019. Carpenter's max-out date calculations also included good-time and work credits, which SCDC allowed Carpenter to earn and record towards his sentence.

Then, on June 24, 2011, Carpenter's Offender Summary reflected the same sentence, but the projected max-out date increased to April 7, 2040. **Exhibit E**. On September 12, 2011, after learning that his sentence had been increased by 24 years, Carpenter contacted SCDC classification officials and inquired into the matter. Carpenter received a written response on December 2, 2011 from an employee of SCDC that stated, "Your sentence was modified to show as 25 yr. mandatory minimum day-for-day sentence on 6/24/11."

Carpenter was not given formal notice of the change or advised of his right to a hearing on the matter before SCDC removed his good time and work credits twenty-one (21) years after his conviction. On December 21, 2012, an SCDC staff member acknowledged in a memorandum that Carpenter's sentence had been changed to reflect a max out date of April 7, 2040, due to an audit of inmate sentences conducted in 2011. **Exhibit F**.

The 2011 audit was initiated as a result of an inmate, Carlos Gonzales, writing a letter to the Supreme Court asserting that he was being illegally held because his sentence had expired. **Exhibit G**. Upon receipt of Gonzales' letter, SCDC began an internal audit of all "inmates with a drug trafficking offense prior to 1/1/96 with an incarceration sentence of 25 years or more" who were still in the custody of SCDC as of March 18, 2010. **Exhibit H**. Carpenter was among those inmates. The audit revealed that the record system in the early 1990s was not programmed to capture the 25 years day-for-day. As a result, SCDC unilaterally altered Carpenter's and four (4) other inmate's mandatory minimum sentences in the record and sent an email communication to Carpenter's counsel stating that his sentence had been "updated" and "changed." **Exhibit I**.

SCDC also unilaterally removed good time and work credits that Carpenter had previously earned to his record. In Carpenter's 1993 offender summary, SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." **Exhibit J**.

D. <u>Challenges to Sentence, PCR Applications, and Appellate Litigation</u>

Carpenter has repeatedly attempted to address the unilateral change in his sentence by initiating internal grievances within SCDC, filing actions for post-conviction relief, filing a petition of habeas corpus in Circuit Court, and litigating those matters in the state appellate courts, to no avail, after each action resulted in denial or dismissal.

On September 8, 2013, Carpenter filed an SCDC "Inmate Grievance Form Step 1" that alleged the SCDC improperly removed good time and work credits that were previously listed on his record. Carpenter's Step 1 Grievance was denied. Carpenter then filed an "Inmate Grievance Form Step 2" reasserting the improper removal, although this grievance was also denied. The denial letter informed Carpenter that he could appeal this decision to the Administrative Law Court. After both of Carpenter's grievances were denied, he filed an appeal to the Administrative Law Court on February 7, 2020, seeking to order SCDC to restore his good-time and work credits that were previously earned on his record. The Administrative Law Court granted a motion on July 27, 2020, to hold this matter "in abeyance until there is a final ruling from the Court of Appeals."

On November 18, 2016, Carpenter filed an action in Richland County seeking a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10 and a Petition for Writ of Habeas Corpus. SCDC and the State moved to dismiss Carpenter's actions arguing that his claims were not appropriate for habeas corpus relief and should have been brought under the PCR Act. In April 2017, retired Chief Justice Jean H. Toal, sitting as a circuit judge, denied these motions to dismiss, finding that the circuit court had jurisdiction over habeas petitions and declaratory judgment claims. This matter was eventually heard non-jury on the merits by Circuit Court Judge Robert Hood, on June 6, 2017.

Prior to his ruling, Judge Hood held an in-chambers conference with counsel for the parties in which he advised that he intended to deny habeas corpus if Carpenter was "going to turn around and sue the State and SCDC." Judge Hood then proposed an agreement where Carpenter would prepare and sign a broad release to both the State and SCDC in which Carpenter would agree not to sue SCDC or the State after his release on habeas corpus and further agree to the release being as broad as possible, including "doubtful and disputed" language. Carpenter agreed to Judge

Hood's proposal and signed a release, that followed Judge Hood's directive explicitly, on June 16, 2017. A copy of Carpenter's signed release (in exchange for granting habeas corpus) was transmitted that date via email to the counsel of SCDC, which is attached hereto as **Exhibit K**. After going silent for a week, defense counsel carefully responded to the deal by stating, "The department is unable to alter or amend Mr. Carpenter's sentence as doing so would be in direct contravention of the unambiguous sentencing sheets and the statutes under which he was sentenced," and "We will not be able to consent to Mr. Carpenter's release." **Exhibit L**.

After additional prodding from Carpenter's counsel as to the issuance of an order, on July 12, 2017, Judge Hood requested proposed orders from SCDC, with no indication of what his intended ruling might be. Hearing nothing for a month, Carpenter's counsel reached out again to Judge Hood on August 28, 2017. There was no response. Two weeks later, on September 14, 2017, Carpenter's counsel reached out again to Judge Hood and, again, there was no response. On October 2, 2017, Judge Hood transmitted copies of two (2) orders that he signed on September 12, 2017, that ruled in favor of SCDC and the State, dismissing Carpenter's habeas petition and complaint. His rationale included "that these claims could be raised under a PCR application, they are procedurally barred, as such, the only avenue through which Plaintiff can file a petition for Writ of Habeas Corpus is in the original jurisdiction of the Supreme Court."

Carpenter then filed an appeal with the Court of Appeals and, contemporaneous with the appeal, a petition for original jurisdiction and a Writ of Habeas Corpus with the Supreme Court of South Carolina. On June 12, 2018, the Supreme Court of South Carolina denied Carpenter's petition for original jurisdiction and Writ of Habeas Corpus. This court also denied Carpenter's motion to certify the appeal that was pending before the Court of Appeals. On appeal, Judge Hill's order construed Carpenter's habeas corpus petition as an application for PCR and remanded to the

circuit court for an evaluation of his claim and a PCR hearing. See *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426. Judge Hill concluded that "[Carpenter] has not yet exhausted his PCR remedies pursuant to *Gibson* and is procedurally barred from raising his claims in a petition for habeas corpus in the circuit court until he has done so."

On April 19, 2022, the matter in the Administrative Law Court was held in abeyance again pending resolution of the circuit court's ruling on the pending motion to amend in the PCR matter. (Order Holding Matter in Abeyance, April 19, 2022).

On June 10, 2022, Judge Knie denied Carpenter's motion to amend the complaint and consolidate all claims and issues in the post-conviction relief matter. Her rationale was that the claims in the Administrative Law Court Action were not properly pursued in a post-conviction relief matter.

After the circuit court denied Carpenter's PCR claims, the ALC matter was resumed. On October 14, 2022, Judge Robert L. Reibold issued an order dismissing Carpenter's claims in the Administrative Law Court and affirmed SCDC's removal of Carpenter's good time and work credits. (Final Order, Oct. 14, 2022). Judge Reibold's rationale entailed: "The Court is not convinced that the fact that a sentence must be served "day for day" precludes the accrual of good time and/or work credits" but that "there is no state-created liberty or property interest at issue" so the appeal should be summarily dismissed. (Final Order, Oct. 14, 2022). Carpenter appealed the ALC's decision to the Court of Appeals on November 11, 2022, and on March 19, 2025, the Court of Appeals issued an Opinion affirming the ALC. (Op. No. 2025-UP-092).

On April 21, 2023, Judge Coble on remand found that the hearing on March 28, 2023, was a PCR hearing and that Carpenter had exhausted all PCR remedies because the circuit court granted SCDC's motion to dismiss and denied Carpenter's claims for post-conviction relief. Judge Coble

concluded that Carpenter "may choose to attempt to have his habeas petition heard in the Supreme Court." (Order Denying PCR, April 21, 2023).

Carpenter's other remedies are "inadequate or unavailable," due to exhausting his successive PCR remedies, thus warranting this Court's intervention.

STANDARD OF REVIEW

Allegations in a habeas petition "are to be treated as true." *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998). Habeas relief is appropriate when other potential avenues of relief have been exhausted and the petitioner demonstrates (1) a constitutional violation, and (2) "the denial of fundamental fairness which, in the setting, is shocking to universal sense of justice." *Moore*, 436 S.C. at 218, 871 S.E.2d at 429 (quoting *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)). The Court's original jurisdiction gives it the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system." State v. Torrence, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991) (Gregory, C.J., Chandler and Toal, JJ., concurring).

REASONS RELIEF SHOULD BE GRANTED

I. <u>The Trial Court lacked jurisdiction to impose a consecutive twenty-five-year sentence during the hearing on August 9, 1990</u>.

The trial court's jurisdiction to sentence Carpenter ended when the trial court accepted Carpenter's plea and sentenced him on June 4, 1990; therefore, Judge Cottingham lacked jurisdiction to impose the consecutive twenty-five-year sentence during the second hearing on August 9, 1990.

In South Carolina, the law is well-settled that a trial judge cannot impose or modify a criminal sentence after the term of court has adjourned because the judge loses jurisdiction when

the term of court ends.[1] In the context of criminal procedure, the South Carolina Supreme Court defines "term of court" as a specific period during which a court is in session and has jurisdiction to act on matters before it.[2] Sentences imposed during such a term cannot be amended after the term's adjournment unless certain circumstances exist, [3] specifically, timely post-trial motions [4] or motions for a new trial based on after-discovered evidence under Rule 29, S.C.R.Crim.P. [5]

Judge Cottingham's general authority to accept the guilty plea and then sentence Carpenter arose by virtue of an order of Chief Justice George Gregory, dated November 15, 1989, which vested Judge Cottingham with authority to "dispose of all matters... arising from State Grand Jury Investigation No. 89-005." **Exhibit M**. Accordingly, Carpenter does not dispute that Judge Cottingham possessed the requisite jurisdiction to conduct the April 7, 1990 plea hearing and the June 4, 1990 sentencing hearing. Carpenter merely contends that the sentencing judge lost that jurisdiction or authority to alter or "enhance" Carpenter's previously imposed sentence when he failed to retain jurisdiction past the expiration of the term of court *sine die* in which Carpenter's

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[1] S.C.R.Crim.P. Rule 29; *State v. Smith*, 276 S.C. 494, 497, 280 S.E.2d 200, 201 (1981); *State v. Moulds*, 264 S.C. 404, 407, 215 S.E.2d 445, 447 (1975); *State v. Best*, 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972) ("When a trial judge adjourns his court *sine die*, he loses jurisdiction of a case finally determined during that term, except under special circumstances, as where either by consent or acquiescence of counsel for both sides, or postponing determination of motions duly entered during the sitting of the court, or in some cases where supplemental orders germane to and carrying out the order duly made, and not inconsistent therewith, may be passed.").

[2] *State ex rel. McLeod v. County Court of Richland County*, 261 S.C. 478, 484-85, 200 S.E.2d 843, 845-46 (1973) (voiding amendments to sentences made by a trial judge after the term of court had ended); *State v. Campbell*, 373-74, 376 S.C. 212, 215-16, 656 S.E.2d 371 (2008); *Tant v. S.C. Dep't of Corr*., 408 S.C. 334, 343-44, 759 S.E.2d 398, 402 (2014).

[3] *Id.*

[4] Per Rule 29, SCRCP, a post-trial motion must be filed within 10 days after the imposition of the sentence. If such a motion is timely filed, the court retains jurisdiction to hear and decide the motion even after the term of court has ended. However, if the motion is not filed within the 10-day period, the court loses jurisdiction to entertain it. See *State v. Campbell*, 376 S.C. 212, 215-16, 656 S.E.2d 371, 373-74 (2008); *State v. Slocumb*, 412 S.C. 88, 92-93, 770 S.E.2d 436, 438-39 (2015); *State v. Warren*, 392 S.C. 235, 238-40, 708 S.E.2d 234, 235-37 (2011).

[5] Per Rule 29, SCRCP, this exception allows the court to consider a motion for a new trial if it is based on evidence discovered after the trial. Such motions are not subject to the 10-day limitation and can be filed beyond the expiration of the term of court *State v. Campbell*, 656 376 S.C. 212, 215-16, S.E.2d 371, 373-74 (2008); *State v. Slocumb*, 412 S.C. 88, 92-93, 770 S.E.2d 436, 438-39 (2015).

sentence was fully, finally, and properly imposed by Judge Cottingham. Importantly and consequently, Carpenter thus takes issue with the improper *re-sentencing* after the loss of jurisdiction/authority to do so, i.e. after the concurrent sentences were imposed initially.

Prior to enhancing Mr. Carpenter's sentence, Judge Cottingham briefly addressed the questionable authority of the Court in the second hearing when he stated "ordinarily during the week of general sessions court, our Supreme Court has said that the term ends on Friday, and the judge cannot, thereafter, change the sentence later. I don't know what the Supreme Court will say in connection with this." (Aug. 9, 1990, Tr. p. 141, line 22 – p. 142, line 1). Nonetheless, Judge Cottingham proceeded to improperly change or enhance Carpenter's sentence to run consecutively instead of concurrently, effectively increasing Carpenter's sentence from twenty-five (25) years to fifty (50) years total.

A. Judge Cottingham's appointment over cases arising from the State Grand Jury did not provide him with jurisdiction in perpetuity over Carpenter's case.

The state grand jury (SGJ) was born from legislation enacted in 1987, which went into effect in February 1989, when Article I, Section 11 and Article V Section 22 of the South Carolina Constitution were amended to accommodate the establishment of the SGJ. 1987 Act No. 150. Thus, the SGJ process was in its infancy at the time Carpenter's pleas were taken in 1990, and procedures in place at that time remain in some respects unclear.

The South Carolina Supreme Court has had to issue a series of Administrative Orders to create procedure for the handling of cases which arise from indictments of the SGJ. *See* 2000-12-07-01, which states, *inter alia*, that "it has been necessary for the Supreme Court... to set out through administrative orders certain duties and responsibilities" governing the SGJ. Administrative Order 2000-1207-01 spelled out a procedure for assigning judges to hear cases

following the return of indictments by the SGJ. Nevertheless, no published orders appear prior to the 2000 order, so the actual procedure that was in place a decade before is unknown. The procedure generally, however, is irrelevant. What is relevant is the jurisdiction or authority of the sentencing judge at the time of purported sentencing.

The Chief Justice's authority to assign circuit judges for individual terms of court has remained unchanged at least since the last amendment to Article V, Section 4 of the South Carolina Constitution via 1985 Act 9. Article V, Section vests the Chief Justice with exclusive authority to "set the terms of court and... assign any judge" to preside over that term. Therefore, the "term of court" analysis set forth in *State v. Campbell* and its progeny, discussed *infra*., is the applicable and controlling law in this case, notwithstanding any subsequent orders that may have been issued regarding statewide grand jury proceedings and/or any statutory amendments, including S.C. Code Ann. § 14-7-1630(B). That statute relates only to the establishment and operating of the SGJ and identifying the duties of the presiding judge of the statewide grand jury, it does not speak to the individual terms of court assigned by the Chief Justice.

Thus, nothing in the statutes regarding the SGJ or otherwise supersedes the constitutional authority of the South Carolina Supreme Court to assign judges as necessary to carry on the business of the courts of general sessions. S.C. Const. art. V, 4. Nor could the statutes attempt to usurp the authority of the Supreme Court and the Chief Justice to assign judges under its exclusive right to do so. A statute which attempted to do so would violate the separation of powers doctrine. *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012) (invalidating the statutory procedure which purported to vest in circuit solicitors with authority to control the docket in general sessions court, as violative of the separation of powers doctrine).

Accordingly, the 1989 order appointing Judge Cottingham to "dispose" of certain cases arising out of a particular grand jury did not create or provide for any continuing jurisdiction in perpetuity. It merely made certain that Carpenter's matter would be brought before Judge Cottingham and that judge only, but still within the framework of whatever term of court during which Judge Cottingham received it. It appears that there is no order from the Supreme Court setting a term of court during August 1990. This was confirmed by the State Grand Jury on August 10, 2023, following Carpenter's FOIA request for the same. **Exhibit N**. If the jurisdiction of Judge Cottingham continued in perpetuity, the case itself would continue, and thus could never be "disposed" of permanently by Judge Cottingham. That would be inconsistent with the long-standing default rule that a trial judge loses jurisdiction over a particular criminal matter when the term of court during which it was concluded adjourns *sine die.* *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008).

B. Carpenter was fully sentenced on June 4, 1990, such that the subsequent change to his sentence in August 1990 was void for lack of authority on the part of the sentencing judge.

"Judgment in a criminal case is not final until sentence is imposed." *State v. Robinson*, 287 S.C. 173, 174, 337 S.E.2d 204 (1985). Carpenter's plea was entered on April 7, 1990, but because Judge Cottingham did not impose any sentence at that time, he thus naturally retained jurisdiction to impose sentences at a later date. *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008). Carpenter contends, as is supported by the facts set forth in extensive detail in the Statement of Facts supra, that he was fully and finally sentenced on June 4, 1990. To wit, the Court said "Now, I tell you that this Court will abide by this plea agreement. I tell you that upon the record." (April 7, 1990, Plea Tr. page 10, lines 19 – 20) and "I am going to abide by the plea agreement. [Carpenter] is entitled to that, and I will do that." (*Id*. at p. 20, lines 14-15) before executing at

least the sentencing sheet for Case 90GS475002 that day, thereby effectuating a resolution of the two charges that were being disposed of jointly.

In other words, having tied the two matters together via the plea agreement that was pointedly and purposefully accepted in April, the matters remained inseparable at time of sentencing, and absent vacation of the entirety of the plea agreement, and resolution of -5002 in June was resolution as to them both concurrently.

The August hearing transcript contains statements as to why Judge Cottingham was attempting to then sentence Carpenter to 25 years consecutive on Indictment No. 90GS47-05001, which confirm that he had already sentenced Carpenter to concurrent sentences in accordance with the plea agreement previously. He determined that he would leave "the first part" of the sentence intact but that he was "enhancing" the sentence on the second indictment. (Aug. Tr. P. 141, lines 2 – 25). No sentencing sheet on 97GS4705001 from the June 4, 1990 proceeding has been found. But the trial judge's statements on August 9, 1990 make clear that he thought he was enhancing a sentence that had already been imposed on June 4, 1990 when the sentence on 97GS47-5002 was completed. He was clear in his intent on both dates, but equally lacking in continuing authority on the latter, just as he seemed to be aware and acknowledged:

> As you well know, ordinarily during a week of general sessions court our Supreme Court has said that the term ends on Friday and the judge cannot, thereafter, change the sentence later. I don't know what our Supreme Court will say in connection with this.

(Aug. 9, 1990, Tr. p. 141, line 21 – p. 142, line 1).

It is well settled that a trial judge loses authority to change a sentence in a criminal matter after the term of court adjourns *sine die*. *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008) ("It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal

matter once the term of court during which judgment[6] was entered expires."). Each week of court is a separate term. *State v. Mixon*, 275 S.C. 575, 274 S.E.2d 406 (1981), cited with approval in *Campbell*.

State v. Campbell is startlingly similar to this case. The defendant Campbell was sentenced pursuant to a plea agreement. *Id*. at 372. After a trial in a related matter, at which Campbell allegedly did not comply with the plea agreement's requirement to cooperate, the State made a motion to vacate Campbell's plea agreement and sentence. The sentencing judge scheduled a hearing, vacated the earlier sentence, and re-sentenced Campbell to life in prison. The Supreme Court[7] vacated the life sentence, determining that the trial judge lacked the authority to reconvene the proceeding and change Campbell's sentence. *Id*. at 374.

The ruling in *Campbell*, confirming that the trial judge's subject jurisdiction is lost at the end of the term has recently been reaffirmed. *Tant v. State*, 408 S.C. 334, 759 S.E.2d 398 (2014), citing to *Campbell*. In *Campbell*, the Supreme Court said that the trial judge's authority in a particular criminal matter ends at the end of a term of court, but that the lack of authority was <u>not</u> an issue related to subject matter jurisdiction. The Supreme Court's reliance for that declaration was *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 594 (2005). However, the *Gentry* decision construed subject matter jurisdiction issues with respect to a defective indictment and overruled prior decisions that had held that a defective indictment deprived the trial court of subject matter jurisdiction. The discussion regarding subject matter jurisdiction in *Campbell* was not necessary

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[6] Judgement was not entered on April 7, 1990, because while the plea was accepted, no sentence was imposed. Judgment was entered on June 4, 1990. The South Carolina Supreme Court has recognized that the "typical procedure" is the defendant pleads guilty pursuant to a plea agreement and then sentencing is held in abeyance until after the defendant has cooperated at the co-defendant's trial." <u>State v. Campbell</u>, at 373-374.

[7] Campbell's appeal was filed with the Court of Appeals, and the Supreme Court certified the case for its own consideration pursuant to Rule 204(b), SCACR. *Id.*

to the Supreme Court's decision as to sentencing after adjournment *sine die* (because Campbell's matter was a direct appeal) and is therefore dicta. Carpenter asserts that, if a trial judge loses authority to act in particular criminal matter after adjournment *sine die*, the trial judge lacks jurisdiction over that particular matter. As confirmed by the Supreme Court in *Tant*, lack of "authority" over a particular criminal matter equates to subject matter jurisdiction in that particular matter.

Carpenter was, in fact, sentenced to 25 years in prison on June 4, 1990 on Count One of Case No. 990-GS-47-5001. (Sentence sheet). It is not known whether the sentencing sheet was executed before, during or after, the in-court proceedings on that date. It is also not known whether a sentencing sheet for the second charge, 90GS475001 was executed on that date, but Judge Cottingham's authority to impose or affect Carpenter's sentence concluded at the adjournment *sine die* of the term of General Sessions court which began June 4, 1990.

Additionally, there is nothing in the record indicating that the State filed a motion seeking to alter or amend Carpenter's sentence within ten (10) days of his sentencing hearing on June 4, 1990. Only upon a timely post-trial or, in this instance, post-sentencing motion could the court have retained jurisdiction beyond the term of court for the week of June 4, 1990.

II. SCDC violated Carpenter's right to due process when it unilaterally modified and increased Carpenter's sentence in 2011.

"Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." *Tant v. SC Dep't of Corr.,* 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014) citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id*. The "length of an inmate's incarceration implicates a

constitutional liberty interest" which requires compliance with due process requirements. *Id. (*citing *Greenholtz v. Inmates of Neb. Penal & Corre. Complex*, 442 U.S. 1, 18, 99 S. Ct. 2100, 60 L.Ed. 668 (1979) ("Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary government action.")). As result, the *Tant* court held that whenever SCDC "alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing." *Id.* 408 S.C. at 342, 759 S.E.2d 401.

Carpenter was not given formal notice of the change or advised of his right to a hearing on the matter before SCDC increased his sentence and removed his good time and work credits twenty-one (21) years after his conviction. Carpenter did not have a hearing at the time his sentence was allegedly "modified." It was only after

SCDC cannot remove earned credits from an inmate's record once they have been earned. *Furtick v. S.C. Dep't of Corr.*, 374 SC. 334, 549 S.E.2d 35 (2007). "The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state created right was not arbitrarily abrogated." *Id.* 649 S.E.2d 37. In *Furtick*, the South Carolina Supreme Court quoted from *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445,454, 105 S. Ct. 2768, 86 L.Ed.2d 356 (1985) to state "[w]here a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus, the inmate has a strong liberty interest in assuring the loss of good-time credits is not imposed arbitrarily."

III. SCDC violated Carpenter's Right to Equal Protection Through Its Intentionally Disparate Treatment of Carpenter as Compared to Others Similarly Situated.

The Equal Protection Clause states, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016).

Bobby G. Horne (hereafter "Horne") was arrested in connection with the same course of events as was Carpenter and also pleaded guilty to a violation of S.C. Code Ann. Section 44-53-370(e). **Exhibit O**. Horne's plea was to trafficking in cocaine and was included as part of Indictment No. 90-GS-47-5002, the indictment in which Carpenter pleaded guilty to trafficking in cocaine. Horne was also sentenced to a mandatory minimum sentence of 25 years under S.C. Code Ann. Section 44-53-370(e). **Exhibit P**. His sentence for trafficking in cocaine was therefore identical to Carpenter's, cementing his status as "similarly situated" to that of Carpenter.

At the time Carpenter and Horne were indicted, the language at the end of S.C. Code Ann. Section 44-53-37(e) read as follows:

> Any person convicted and sentenced under this subsection to a mandatory minimum term of imprisonment of twenty-five years or a mandatory term of twenty-five years or more **is not eligible for parole, extended work release, as provided for in Section 24-13-610, or supervised furlough, as provided for in Section 24-13-710.** Notwithstanding Section 44-53-420, any person convicted of conspiracy pursuant to Section 44-53-370(e) must be sentenced as provided herein with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.
>
> § 44-53-370(e) (Supp. 1988) (Emphasis added).

Horne was given sentence credits for good time served, pursuant to S.C. Code Section 24-13-210, earned work credits pursuant to S.C. Code Section 24-13-230, was eligible for parole, and was eligible for work release and release and supervised furlough. As a result, Horne was released

from active custody to supervised furlough on August 30, 2001, and his sentence ended completely on March 1, 2002. **Exhibit Q**. On information and belief, other inmates who have been in the custody of SCDC with 25-year sentences for trafficking in cocaine in violation of Section 44-53-370(e) have been granted work credits, good time credits, other administrative credits, have been released on supervised furlough or some combination thereof.

Carpenter was initially allowed to earn the same credits that Horne earned and was originally made eligible for work release. At some point, after Carpenter's earned credits were stripped from him, and his eligibility for work release was also extinguished, all unilateral acts by SCDC. Carpenter and Horne were treated differently by SCDC in terms of work credits earned, parole eligibility, work release, and supervised furlough, even though their sentences on indictment 90-GS-47-5002 were identical.

SCDC changed Carpenter's sentence in its records, apparently at the same time that it engaged in such changes to the records of many other individuals. Even assuming such changes were proper, they occasioned an opportunity to treat every such affected inmate in the same manner, yet have failed. Horne remains released, without any apparent desire or attempt on the part of the State to seek the claimed lawful fulfillment of his full sentence. In the words of SCDC's counsel at trial, "Mr. Horne got out. He got lucky." (Tr. p. 70, line 23). Further, counsel stated "I think if the Department had the resources to have gone out and bring people back in or legally do that, maybe they would have." (Tr. p. 71, line 6-8).

It is respectfully submitted that the acknowledgement that others in the exact same position as Carpenter merely "got lucky" and will not be subject to the allocation of nearly unlimited resources of the State to apprehend them, despite leaving confinement "early" by supposed clerical or calculation error or otherwise, constitutes "intentional or purposeful discrimination" by the State

against Carpenter. Carpenter is not advocating for the broad release of numerous inmates, but instead, that "all" inmates sentenced under the same indictment (No. 90-GS-47-5002), for the same offense, be treated equally.

CONCLUSION

Wherefore, having fully set forth the grounds for relief sought, Carpenter seeks a Writ from the Court establishing Carpenter's immediate release from the South Carolina Department of Corrections and reflecting his sentence as having been fully served via order of this Court, or, in the alternative, a Writ from the Court setting aside the proceedings and resulting sentence from the August 9, 1990 hearing and remanding the matter to the circuit court for Carpenter's resentencing on indictment 90-GS-47-5002, and for such other relief as the court deems just and proper. Because he is being held in violation of his constitutional rights, Carpenter prays for an expedited hearing on the legal issues presented immediately following the filing and service of responsive pleadings.

Respectfully submitted,

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