

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JARIUS SANDERS,

APPELLANT

APPELLATE CASE NO. 2023-000897

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2026-UP-068

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing regarding this Court's holding that appellant's one-year revocation did not exceed his ten-year sentence because this Court might have inadvertently overlooked the fact that the original ten-year sentence was replaced with an eight-year sentence, which in turn became the controlling and operative sentence; and that as a result, the revocation extended appellant's prison time beyond the legal limit in the case. In addition, the fact that appellant's probation had been terminated previously rendered the revocation in question unlawful as well. In support of this petition, counsel submits the following information.

1. Appellant Jarius Sanders was convicted of assault and battery of a high and aggravated nature during the February 2016 term of the Chester County General Sessions Court and sentenced to imprisonment for a period of ten years, suspended on the service of three years probation. On September 19, 2016, appellant's probation was revoked and thereafter an eight-year sentence was imposed, and his probation was terminated. On May 24, 2023, a probation revocation hearing was held whereinafter his sentence was revoked by one year.
2. The issue raised on appeal was whether the circuit court judge erred in revoking one year of appellant's community service time because the revocation resulted in an increased sentence that exceeded the limit on his eight-year sentence inasmuch as the original ten-year sentence no longer existed in the case.
3. This Court affirmed and held as follows:

The sentence (one year revocation) did not extend {appellant's} time in prison beyond his original sentence of ten years imprisonment....thus, the circuit court did not err.

4. **ORIGINAL v. OPERATIVE/CONTROLLING SENTENCE**

In the case at bar, appellant's prior ten-year sentence, suspended upon probation for three years, was ultimately supplanted by an eight-year sentence along with an accompanying termination of probation. At appellant's first probation revocation hearing held on September 19, 2016, the circuit court judge sentenced appellant to eight years and terminated his probation. Therefore, after appellant's second probation revocation hearing, which formed the basis of the instant appeal, the issue raised was whether the circuit court judge erred in calculating the matter of probation based on a ten-year sentence rather than the eight-year controlling and hence operative sentence. Clearly, the eight-year sentence was the controlling and operative sentence in

this case, which meant that it was error to revoke appellant's probation for one year because the revocation exceeded service time on the eight-year sentence. This Court inadvertently based its ruling on the mistaken impression that the one-year probation revocation referenced the ten-year sentence and thus did not exceed or increase appellant's sentence time; but to the contrary, the one-year revocation indeed increased appellant's sentence time because the operative and/or controlling sentence was an eight-year sentence rather than a ten-year sentence.

5.) The circuit judge found that appellant violated his probation (drug use and firearm possession) in the instant case and issued a one-year revocation of his community supervision term. However, that one-year revocation in the case enlarged appellant's overall sentence to exceed his eight-year sentence. This increased sentence beyond eight years was the result of the probation revocation that violated S.C. Code Ann. §24-21-560 as appellant's eight-year sentence was the operative sentence that was controlling in the case. In addition, appellant's probation was an illegal sentence because his probation had been terminated.

6.) According to the record, appellant served five or six months beyond his 85% time on his eight-year sentence, which resulted in a service time of approximately seven years and two or three months. Clearly, a one-year revocation resulted in the service of two or three months beyond appellant's eight-year operative sentence (i.e. eight years and two months or eight years and three months). Note trial counsel's supporting argument below:

Defense Counsel: This is the Form 4 from the original violation that happened in 2016 I believe. The judge, at that time, revoked 8 years and terminated Mr. Sander's sentence. Mr. Sanders went to prison on or about, I guess, September 19, 2016. His tart date was eventually backdated to 11/6/15. He was released from SCDC on 11/29/22, after he served 5 or 6 months longer than he should have actually served on an 85 percent crime. So according to the community supervision tab, the original sentence should be 10 years and the Court can revoke him up to one year for that violation. However, the SCDC tab of the probation file says that

Mr. Sanders only has 163 days left, that I guess SCDC will actually incarcerate him. If the Court does revoke the full year that probation is asking for, that puts him serving longer than the 8 years sentence that he was actually revoked on. Tr. 3, lines 6-22.

Defense Counsel: [I]f the Court is inclined to side with probation, you end up extending his sentence longer than the 8 years that he was initially revoked and terminated on. I just don't think that the Court can supersede that 8 years sentence. Tr. 4, lines 11-16.

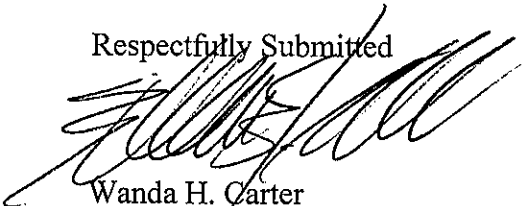
5. In State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), the Court addressed this issue in relation to S.C. Code Ann. §24-21-560 as follows:

A prisoner who is sentenced for successive revocations of the community supervision program may be required to serve terms of incarceration for successive revocations and may be required to serve additional periods of community supervision for successive revocations; [however], the maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed for the original...offense...

Additionally, note that appellant had only one suspended sentence, which was ultimately terminated before the instant revocation. Hence, there was no suspended sentence on the eight-year sentence that existed at the time of the instant probation revocation; and as a result, the one-year revocation in the present case not only exceeded appellant's eight-year sentence, but it resulted in an illegal sentence as well.

WHEREFORE, inasmuch as the circuit court judge's revocation in the case constituted error, the undersigned counsel would request that this Court grant the petition for rehearing.

Respectfully Submitted



Wanda H. Carter
Chief Appellate Defender

This 5th day of March 2026

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IN THE COURT OF APPEALS

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SC Court of Appeals

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Honorable Brian M. Gibbons, Circuit Court Judge

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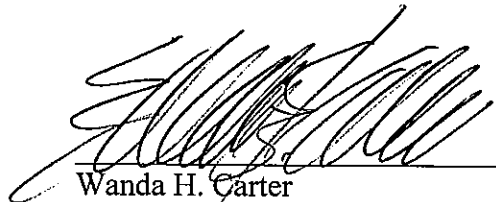
JARIUS SANDERS,

APPELLANT

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jarius Sanders, at 396 Border Rd. E, Rock Hill, SC 29730, this 5th day of March, 2026.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

RECEIVED

Mar 05 2026

Leverett, Scott

SC Court of Appeals

From: Leverett, Scott
Sent: Thursday, March 5, 2026 2:28 PM
To: SC - BUCHANAN MATTHEW
Cc: SC - NICHOLS DAWN; Carter, Wanda
Subject: 2023-000897 - State v. Jarius Sanders - Petition for Rehearing
Attachments: 2023-000897 - State v. Jarius Sanders - Petition for Rehearing.pdf

Dear Mr. Buchanan,

Attached please find a copy of the petition for rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense