

THE STATE OF SOUTH CAROLINA
In the Supreme Court

In The Original Jurisdiction

Appellate Case No. 2026-000702

Charles E. Carpenter, #181783,

v.

State of South Carolina, et al.,

RECEIVED

Apr 27 2026

S.C. SUPREME COURT

Petitioner,

Respondent.

**RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS**

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ATTORNEYS FOR RESPONDENT

NOW COMES Respondent, by and through undersigned counsel, and respectfully submits this Return to Petition for Writ of Habeas Corpus filed March 18, 2026. This Court issued a letter requesting a return on April 10, 2026. The Petition should be denied.

I. PROCEDURAL POSTURE AND EXHAUSTION

The procedural history of this matter spans more than thirty-five years and is set forth in detail as follows:

Charges and Guilty Plea Proceedings

At a March 1990 session, the South Carolina State Grand Jury issued a seven-count superseding indictment against Petitioner and nine other defendants. (1990-GS-47-05-001). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Marijuana (Count 1) and Trafficking in Marijuana (Count 2). At the same session, the South Carolina State Grand Jury issued a superseding eighteen count indictment against Petitioner and ten other defendants. (1990-GS-47-05-002). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Cocaine (Count 1) and Trafficking in Cocaine (Count 2). Petitioner was represented on the charges by Lionel S. Lofton, Esquire.

On April 7, 1990, Petitioner, alongside counsel, appeared before the Honorable Edward B. Cottingham, the circuit court judge who had been vested with continuing, concurrent jurisdiction over this statewide grand jury matter¹, to enter guilty pleas to the conspiracy counts from both indictments in return for the dismissal of the other counts as well as the dismissal of numerous

¹ By order dated November 15, 1989, Chief Justice George T. Gregory, Jr. vested Judge Cottingham with "concurrent jurisdiction in all circuits of the state to dispose of all common pleas and general sessions matters, including trials by jury, arising from State Grand Jury Investigation No. 89-005."

other serious charges.² Petitioner pled pursuant to a written plea agreement, which provided that he would receive *concurrent* twenty-five-year sentences of imprisonment on the conspiracy counts *if* he abided by the agreement and cooperated with authorities, but that the agreement was nullified and the State could request the sentences be run *consecutively* if he failed to cooperate pursuant to the terms of the plea agreement. Judge Cottingham accepted Petitioner's pleas to both counts and, pursuant to the plea agreement, deferred sentencing on both counts.

On June 4, 1990, the parties reconvened before Judge Cottingham for a sentencing proceeding. At the start of the hearing, Petitioner moved to relieve Mr. Lofton as his counsel and to retain new counsel, Timothy F. Rogers and Michael J. Cox, to represent him. Judge Cottingham allowed Mr. Rogers and Mr. Cox to appear but ordered Mr. Lofton to remain on the case due to his familiarity with the issues and the late nature of Petitioner's decision to retain new counsel. The State then alleged Petitioner had violated numerous provisions of the plea agreement, including failing to be truthful and cooperative, attempting to intimidate and threaten witnesses, and failing a polygraph test. The State requested Judge Cottingham bifurcate the sentencing proceeding and impose a sentence on the cocaine indictment, but defer sentencing on the marijuana indictment until a later date to allow for a presentation as to whether Petitioner violated the plea agreement. Over Petitioner's objection, Judge Cottingham found sufficient probable cause existed to determine whether Petitioner violated the plea agreement and agreed to bifurcate the sentencing

² While not directly referenced in the plea agreement between Petitioner and the State on the State Grand Jury indictments, numerous charges brought by other jurisdictions were dismissed based on Petitioner's guilty plea. For example, Marlboro County burglary and kidnapping charges against Petitioner were dismissed, and Richland County charges against Petitioner were also dismissed. Federal firearm charges were dismissed out of the Florence Division of the U.S. Attorney's Office. It was agreed that sentences on pending North Carolina charges would be served concurrently with the South Carolina sentences. The State further agreed not to pursue charges against Petitioner for offenses that were committed prior to the State Grand Jury indictments.

proceedings. Accordingly, Judge Cottingham sentenced Petitioner to twenty-five years' imprisonment and a \$200,000 fine on the cocaine indictment (1990-GS-47-002). Judge Cottingham did *not* impose a sentence on the marijuana indictment (1990-GS-47-001), but instead deferred sentencing on this indictment until a future hearing to determine if Petitioner had breached the plea agreement in accordance with Chief Justice Gregory's November 15, 1989, order granting Judge Cottingham continuing jurisdiction over this statewide grand jury case.

On August 9, 1990, the parties again reconvened before Judge Cottingham to determine whether Petitioner had breached the plea agreement and for sentencing on the marijuana indictment (1990-GS-47-001). Various witnesses, including investigators and a co-defendant, testified. At the conclusion of the hearing, Judge Cottingham found that Petitioner had willfully failed to cooperate with authorities and had threatened witnesses and codefendants, thereby violating his obligations under the plea agreement. Judge Cottingham sentenced Petitioner to a consecutive term of twenty-five years' imprisonment and a \$50,000 fine on the marijuana indictment (1990-GS-47-001). However, Judge Cottingham retained jurisdiction to afford Petitioner yet another opportunity to cooperate with law enforcement as required by his plea agreement.

On February 3, 1992, a final hearing was held, during which Judge Cottingham, upon motion from the State seeking Judge Cottingham to discharge jurisdiction relative to Petitioner's potential cooperation, issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter, which had previously been conferred by Chief Justice Gregory pursuant to his 1989 order. An order to this effect, summarizing all prior proceedings and affirming his consecutive sentences based on Petitioner's non-compliance with the plea agreement, was filed on the same date.

Direct Appeal

A notice of appeal was timely filed and served on behalf of Petitioner by Mr. Rogers and Mr. Cox. A Transcript of Record was filed with the South Carolina Supreme Court on November 27, 1990. However, on April 12, 1991, Petitioner filed an affidavit requesting withdrawal of his appeal, presumably because the imposition of the sentences had not yet become final. A subsequent notice of appeal was filed on February 11, 1992. J. Christopher Mills, Esquire, and Barbara Anne Leitner, Esquire, perfected the appeal. The Supreme Court affirmed Petitioner's convictions and sentences. State v. Carpenter, Op. No. 94-MO-182 (Sup. Ct. filed July 15, 1994).

First Post-Conviction Relief Action: 1993-CP-13-00255

While the direct appeal was pending, Petitioner filed a petition for writ of habeas corpus dated October 29, 1993. The State filed a motion to dismiss the petition. Judge Cottingham granted the motion to dismiss by order dated March 15, 1994.

Petitioner filed a notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense, perfected the appeal. The South Carolina Supreme Court affirmed Petitioner's convictions and sentences and ruled that Petitioner was not entitled to relief.

Motion to Vacate Sentence

In July and August of 1996, Petitioner, through counsel Fred Henderson Moore, moved to have Judge Cottingham vacate or reduce his sentences imposed on June 4, 1990, and August 9, 1990. In support of this motion, Petitioner asserted:

- (1) the sentencing court imposed a sentence greater than that authorized by statute under which he entered his guilty plea;
- (2) the two counts of conspiracy to traffic in cocaine and marijuana carried a maximum of one half that allowed for trafficking at the time of his sentencing;
- (3) the court imposed a sentenced and judgment which it had no statutory nor constitutional or jurisdictional authority to impose, and

- (4) he was unaware his sentence was unauthorized until a week ago when this matter was review with the assistance of counsel.

Petitioner also moved for the recusal of Judge Cottingham on the grounds of bias. The State served its opposition to this motion on July 19, 1996, and August 27, 1996. By order filed September 3, 1996, Judge Cottingham denied the motion and reaffirmed his consecutive sentences.

Second Post-Conviction Relief Action and Appeal: 1995-CP-13-00244

Next, Petitioner filed an application for post-conviction relief on December 22, 1995, wherein he alleged he was being held in custody unconstitutionally for the following reasons:

- (1) State Grand Jury lacked subject matter jurisdiction;
- (2) Single conspiracy;
- (3) Double jeopardy; and
- (4) Ineffective assistance of counsel.

The State filed a Return and Motion to Dismiss dated March 15, 1996. Petitioner followed with amended applications dated January 26, 1999, and January 28, 1999. The first evidentiary hearing was held before the Honorable James E. Lockemy on October 8, 1997. Petitioner was represented by Melvin Roberts, Esquire. At this hearing, Petitioner requested access to all State Grand Jury transcripts related to his case, and the court granted the request. The next hearing took place on July 20, 1998, at which Petitioner testified on his own behalf, and the State called Mr. Lofton. The hearing was continued until August 24, 1998, to obtain further transcripts. Further testimony from Petitioner and Mr. Lofton was taken at the subsequent hearing. Another hearing was held on January 26, 1999, to discuss various matters and to take more testimony from Petitioner. On August 28, 1999, Judge Lockemy issued an Order of Dismissal rejecting Petitioner's claims.

Mr. Roberts then filed a timely "Motion for Amendment to Judgement for a New Trial under Rule 52, SCRCP, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP." The State filed a return on October 7, 1999. A hearing was held on the motion on November 11,

1999. Judge Lockemy then issued an Order dated March 10, 2000, in which he held his original Order of Dismissal correctly disposed of the issues raised by Petitioner.

A notice of appeal from Judge Lockemy's Order was timely served and filed. Paul V. Cannarella, Esquire, represented Petitioner on appeal. On January 17, 2000, Mr. Cannarella filed a Petition for Writ of Certiorari, where he raised the following issues:

- (1) Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the grounds of double jeopardy despite the fact that Petitioner was convicted of two counts of conspiracy where only one conspiracy occurred and in finding that trial counsel's failure to object on the ground of double jeopardy did not constitute ineffective assistance of counsel?
- (2) Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that his guilty plea was not knowingly and voluntarily entered and in finding that counsel's failure to object to the unknowing and involuntary nature of the nature of the guilty plea did not constitute ineffective assistance of counsel?
- (3) Did the Circuit Court err in finding that counsel's failure to move to withdraw the guilty plea did not constitute ineffective assistance of counsel?
- (4) Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that there was a lack of subject matter jurisdiction to defective indictments and in finding that counsel's failure to file any pre-trial motion to question the jurisdiction of the State Grand Jury did not constitute ineffective assistance of counsel?
- (5) Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that Petitioner's sentence exceeds the sentence set out in the statute?
- (6) Did the Circuit Court err in finding that Petitioner was entitled to Post-Conviction Relief on the ground of the conditions of confinement and in finding that counsel's failure to investigate such did not constitute ineffective assistance of counsel?

The State filed a Return to the Petition for Writ of Certiorari dated April 18, 2000, and Petitioner followed with a Reply dated April 30, 2001. On December 13, 2001, the South Carolina Supreme Court denied certiorari, and the Remittitur was returned on January 10, 2002.

Federal Habeas Corpus Petition: 3:02-cv-3807-HMH

Petitioner then filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on November 12, 2002. The State submitted a motion for

summary judgment and memorandum in support on March 7, 2003. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant summary judgment dated October 6, 2003. On January 21, 2004, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. By order filed July 1, 2004, the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

Third Post-Conviction Relief Action and Appeal: 2008-CP-13-00281

Petitioner then filed a *third* application for post-conviction relief on July 3, 2008. The State filed a Return and Motion to Dismiss on October 24, 2008, requesting that the application be dismissed with prejudice because it was filed outside the statute of limitations and was successive to his previous applications. A hearing was convened at the Darlington County Courthouse on January 15, 2009, where Petitioner was present and represented by Tommy A. Thomas, Esquire. The State was represented by Karen C. Ratigan of the South Carolina Attorney General's Office. By order filed February 2, 2009, the Honorable John M. Milling dismissed Petitioner's application with prejudice. A motion to alter or amend was filed on March 13, 2009, and an amended order of dismissal was filed on April 9, 2009.

A timely notice of appeal was filed. Mr. Thomas stayed on to represent Petitioner on appeal and filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 21, 2009. The State filed its Return on November 20, 2009. The Court denied the petition on September 23, 2010. The Remittitur was returned on October 12, 2010.

Habeas Corpus Action: 2016-CP-13-06916

On November 18, 2016, Petitioner filed a Complaint and Petition for Writ of Habeas Corpus in the circuit court in Richland County, listing the South Carolina Department of Corrections as the defendant and seeking a declaratory judgment and order for writ of habeas corpus based on the following claims:

- (1) The trial judge lacked jurisdiction to bifurcate the sentencing proceeding, and therefore lacked jurisdiction to reconvene the sentencing proceeding and impose a consecutive sentence of 25 years (Case No. 1990-GS-47-05001) on August 9, 1990. The trial judge's jurisdiction concluded with the *sine die* adjournment during the term of General Sessions which was held the week of June 4, 1990.
- (2) The trial judge and/or the State violated Carpenter's due process rights when they tried Carpenter on charges that had not been brought against him and *sua sponte* took testimony and found Carpenter guilty of violating the plea agreement, when no additional charges had been brought and that matter was not before the court.
- (3) The trial judge and/or the State violated Carpenter's constitutional rights in that they failed to advise Carpenter of his right to a jury trial on the issue of whether Carpenter had complied with the plea agreement, especially when Carpenter had not been charged with an additional criminal offense related to the plea agreement.
- (4) The trial judge and/or the State violated Carpenter's constitutional rights when the court imposed an "enhanced" sentence on Carpenter on Case No. 1990-GS-47-05001 based on conduct that occurred after the plea has been entered and accepted and was unrelated to the offense to which Carpenter pleaded.
- (5) The trial judge violated Carpenter's constitutional rights when he openly permitted the knowledge he gained as presiding judge for the Grand Jury (much of which was unknown to Carpenter) to be considered in determining a sentence for Carpenter on Case No. 1990-GS-47-05001.
- (6) The sentence imposed on Case No. 1990-GS-47-05001 was illegal and should be vacated, and Carpenter should be immediately released from custody by SCDC.
- (7) SCDC unilateral increase and modification to his sentence in 2011, which was done without notice to him and without an opportunity to be heard, was illegal and a violation of Carpenter's right to due process of law, and therefore was and is void; Carpenter's proper term of incarceration termination on or about July 5, 2015; and Carpenter should immediately be released from SCDC as his legitimate term of incarceration has long ago expired.
- (8) SCDC violated Carpenter's equal protection rights by its disparate treatment of him compared to his co-defendant Bobby H.

See Complaint and Petition for Writ of Habeas Corpus, Charles Eugene Carpenter v. South Carolina Department of Corrections, 2016-CP-40-6916. Petitioner asserted these claims present issues of law only, did not require any discovery or findings of fact, and requested an expedited hearing on the legal issues immediately upon the filing and service of responsive pleadings.

In response, the South Carolina Department of Corrections moved for dismissal, arguing in part that Petitioner has failed to join the State as a necessary party.

On February 16, 2017, a hearing was convened before the Honorable L. Casey Manning, circuit court judge. Thereafter, Judge Manning issued an order of joinder, adding the State of South Carolina as a defendant to the action pursuant to Rule 19 of the SCRPC. In accordance with this order, Petitioner filed an Amended Summons, Complaint, and Petition for Writ of Habeas Corpus.

In response, the State of South Carolina served a return and motion to dismiss the petition for writ of habeas corpus on March 23, 2017, asserting Petitioner's claims were procedurally barred because the claims, all explicitly enumerated in the Uniform Post-Conviction Procedures Act (S.C. Code Ann. § 17-27-10 et seq.), must be raised in a post-conviction relief action and the claims were barred by the doctrine of *res judicata*.

On April 6, 2017, a hearing on the motions to dismiss was convened before the Honorable Jean H. Toal, retired Chief Justice, acting in her capacity as a circuit court judge. Following the hearing, Chief Justice Toal denied the motions to dismiss, finding that while post-conviction relief and internal grievance procedures at the Department of Corrections were available, Petitioner could nonetheless pursue these claims through a declaratory judgment and a writ of habeas corpus. An order summarizing these findings and setting the matter for a merits hearing was filed on April 25, 2017.

On April 28, 2017, the State served its Amended Return to Petition for Writ of Habeas Corpus on Petitioner. In its Amended Return, the State again argued these claims were procedurally barred and also argued the claims failed on the merits because Judge Cottingham had continuing jurisdiction over Petitioner's case and properly imposed a consecutive sentence on the trafficking in marijuana indictment in August 1990, and accordingly, Petitioner's sentence had not expired. On May 10, 2017, the Department of Corrections filed its Answer. On the same date, the Department of Corrections also filed a motion to bifurcate, arguing any claims regarding sentencing credits should be bifurcated from the remaining claims and resolved separately.

On May 12, 2017, Petitioner filed a motion for default, claiming the State and the Department of Corrections failed to respond to his motion for declaratory judgment. The Department of Corrections filed a motion to deny entry of default/summary judgment, or in the alternative, a motion to set aside with leave to file. The State also served a return to the motion for default on May 18, 2017, asking that the motion be denied.

Petitioner filed a memorandum in support of relief requested. In this memorandum, Petitioner asserted there were two claims raised against the State:

- (1) The trial judge lacked subject matter jurisdiction to impose an "enhanced" sentence on Indictment 97GS475001 after recessing court *sine die*.
- (2) The trial judge lacked subject matter jurisdiction to conduct a second "sentencing" hearing several months after sentencing, for the purpose of holding Carpenter in "contempt" of his plea agreement, and to take any action to change his sentences at that time.

On June 7, 2017, a trial was commenced before the Honorable Robert E. Hood, circuit court judge. At the conclusion of the hearing, Judge Hood took the matter under advisement. Thereafter, Judge Hood issued two orders denying relief to Petitioner. In the first order, Judge Hood granted declaratory judgment in favor of the Department of Corrections, finding: (1) SCDC did not violate Petitioner's due process rights when it corrected the "projected max-out date," (2)

Petitioner had no due process rights in work credits because his sentence did not allow for him to earn such credits, (3) even if SCDC had violated Petitioner's due process rights, the procedure and redress Petitioner sought is improper and Petitioner failed to appeal his SCDC's administrative decisions, (4) there was no disparate treatment as the Petitioner is statutorily prohibited from receiving credits on his sentence, and (5) habeas corpus against SCDC is improper. In the second; in an order dispensing and denying all claims made against the State, finding: (1) the action was procedurally barred because the claims must be pursued in post-conviction relief pursuant to the Uniform Post-Conviction Procedures Act, and regardless, Petitioner did not meet the extraordinary standard to pursue a writ of habeas corpus; and (2) the underlying claims failed on the merits because Judge Cottingham had jurisdiction and properly imposed a consecutive sentence.

Thereafter, Petitioner filed a motion to reconsider. The State and the Department of Corrections filed returns opposing the motion to reconsider. By order filed December 18, 2017, Judge Hood denied the motion to reconsider.

Petitioner filed a timely notice of appeal challenging Judge Hood's rulings. (Appellate Case No. 2017-002577). While the appeal of this action was pending before the Court of Appeals, Petitioner filed a separate petition in the original jurisdiction of the Supreme Court, seeking habeas corpus review on the same issues pursuant to Rule 245, SCACR. (Appellate Case No. 2017-002582). Petitioner then petitioned for the consolidation and certification of both appellate actions to the Supreme Court. Following returns from the State and the Department of Corrections, the Supreme Court denied the petition for original jurisdiction and a writ of habeas corpus, dismissed the motion to consolidate as moot, and denied the motion to certify the appeal of Judge Hood's rulings to the Supreme Court.

Following briefing, the Court of Appeals heard argument on this appeal on June 3, 2020.

Thereafter, the Court of Appeals issued a published opinion affirming in part, vacating in part, and remanding the action back to the circuit court. Carpenter v. S.C. Dep't of Corr., 431 S.C. 512, 515, 848 S.E.2d 346, 347 (Ct. App. 2020). The Court of Appeals held Petitioner's claims were expressly enumerated in the Uniform Post-Conviction Procedures Act, and accordingly, must have been brought in a post-conviction relief action as the exclusive framework to adjudicate such claims.

Id. The Court of Appeals elaborated,

However, under *Gibson* it is appropriate to construe Carpenter's current habeas claims as a PCR application, and as such, we vacate Judge Hood's findings regarding the merits of Carpenter's claims for habeas relief and remand Carpenter's case to the circuit court to be treated as a PCR application and for a PCR hearing on the following PCR issues:

Did the sentencing court retain jurisdiction to sentence Carpenter on the conspiracy to traffic marijuana offense in August 1990?

Did SCDC appropriately interpret South Carolina law to find Carpenter's sentence must be served day for day for fifty years and Carpenter is not entitled to his earned work or good-time credits? If SCDC did not, has Carpenter accrued enough sentencing credits to be entitled to immediate release?

Id. at 524, 848 S.E.2d at 352. Regarding Petitioner's assertions of a purported bias of Judge Hood, the Court found the issue was unpreserved for appellate review "because Carpenter never moved for Judge Hood to recuse himself based on his alleged bias in favor of the State." Id. at 525, 848 S.E.2d at 352.³

Neither party petitioned for rehearing. The remittitur was returned on September 10, 2020, remanding the matter back to the circuit court.

³ Respondent notes Petitioner has never moved to recuse Judge Hood from hearing this matter, either while the matter was originally pending in circuit court prior to his appeal or now on remand. Likewise, nothing in the Court of Appeals opinion indicates Judge Hood has been recused or cannot hear this matter on remand.

On November 25, 2020, Petitioner filed a "motion to amend complaint," and attached an amended complaint with numerous exhibits. In this amended complaint, Petitioner asserted Judge Cottingham was without jurisdiction to impose his consecutive sentence for trafficking in marijuana, or, in the alternative, improperly enhanced or altered his previous sentence, and accordingly, has already served his entire twenty-five-year sentence and is being detained illegally. Petitioner also asserted the Department of Corrections illegally changed his "max-out" several times between 1993 and 2011 without affording him due process. Petitioner asserted the Department of Corrections is also illegally denying him sentencing credits that were afforded to similarly situated inmates in violation of his rights. Petitioner also asserted he is entitled to relief because Judge Hood, acting as an agent for the State, suggested a proposal for the agreement of the parties that somehow binds the State.

Petitioner claimed he was entitled to post-conviction relief on the following grounds:

- (1) the sentencing court lacked jurisdiction to bifurcate the sentencing proceeding;
- (2) the sentencing court lacked jurisdiction to reconvene the sentencing proceeding;
- (3) the sentencing court lacked jurisdiction to impose a consecutive sentence of 25 years (Case No. 1990-GS-47-05001) on August 9, 1990 as to the trafficking in marijuana offense included with the plea agreement accepted on an earlier date;
- (4) the sentencing court violated Carpenter's due process rights when they tried Carpenter on charges that had not been brought against him and *sua sponte* took testimony and found Carpenter guilty of violating the plea agreement, when no additional charges had been brought and that matter was not before the court;
- (5) the sentencing court violated Carpenter's constitutional rights in that they failed to advise Carpenter of his right to a jury trial on the issue of whether Carpenter had complied with the plea agreement, especially when Carpenter had not been charged with an additional criminal offense related to the plea agreement;
- (6) the sentencing court violated Carpenter's constitutional rights when the court imposed an "enhanced" sentence on Carpenter on Case No. 1990-GS-47-05001 based on conduct that occurred after the plea had been entered and accepted and was unrelated to the offense to which Carpenter pleaded; and
- (7) the sentencing court violated Carpenter's constitutional rights when he openly permitted the knowledge he had gained as the presiding judge for the Grand Jury (much of which was unknown to Carpenter) to be considered in determining a sentence for Carpenter on Case No. 1990-GS-47-05001;

- (8) SCDC's unilateral increase and modification to his sentence in 2011 was illegal and a violation of Carpenter's right to due process of law, and therefore was and is void, and which was done without notice to him or an opportunity to be heard on the issue; and
- (9) Carpenter has been denied credits towards completion of his sentence that were afforded to him previously, and which were permanently afforded to others equally situated, that would result in his release from imprisonment had they not been unlawfully and improperly withdrawn.

Petitioner then argued, "As the Court of Appeals made clear in its decision, even to the extent such defenses prevail, Carpenter still has available consideration of the facts and circumstances set forth hereinabove on the basis of a petition for habeas corpus." Petitioner then asserted he is entitled to the grant of habeas corpus based on a proposal purportedly suggested by Judge Hood for his relief—an issue that is wholly independent and unrelated to the issues on remand from the Court of Appeals.

On January 25, 2021, Petitioner filed a "supplement to motion to amend complaint," wherein he attached a revised amended complaint, which were substantively identical to the previously filed amended complaint and contained the same claims for post-conviction relief:

- (1) the sentencing court lacked jurisdiction to bifurcate the sentencing proceeding;
- (2) the sentencing court lacked jurisdiction to reconvene the sentencing proceeding;
- (3) the sentencing court lacked jurisdiction to impose a consecutive sentence of 25 years (Case No. 1990-GS-47-05001) on August 9, 1990 as to the trafficking in marijuana offense included with the plea agreement accepted on an earlier date;
- (4) the sentencing court violated Carpenter's due process rights when they tried Carpenter on charges that had not been brought against him and *sua sponte* took testimony and found Carpenter guilty of violating the plea agreement, when no additional charges had been brought and that matter was not before the court;
- (5) the sentencing court violated Carpenter's constitutional rights in that they failed to advise Carpenter of his right to a jury trial on the issue of whether Carpenter had complied with the plea agreement, especially when Carpenter had not been charged with an additional criminal offense related to the plea agreement;
- (6) the sentencing court violated Carpenter's constitutional rights when the court imposed an "enhanced" sentence on Carpenter on Case No. 1990-GS-47-05001 based on conduct that occurred after the plea had been entered and accepted and was unrelated to the offense to which Carpenter pleaded; and

- (7) the sentencing court violated Carpenter's constitutional rights when he openly permitted the knowledge he had gained as the presiding judge for the Grand Jury (much of which was unknown to Carpenter) to be considered in determining a sentence for Carpenter on Case No. 1990-GS-47-05001;
- (8) SCDC's unilateral increase and modification to his sentence in 2011 was illegal and a violation of Carpenter's right to due process of law, and therefore was and is void, and which was done without notice to him or an opportunity to be heard on the issue; and
- (9) Carpenter has been denied credits towards completion of his sentence that were afforded to him previously, and which were permanently afforded to others equally situated, that would result in his release from imprisonment had they not been unlawfully and improperly withdrawn.

Petitioner again asserted the Court of Appeals "made clear" that his claims should be interpreted as a habeas corpus petition should procedural bars preclude review as a post-conviction relief action. Petitioner also asserted he is entitled to a grant of habeas corpus and immediate relief based on a purported proposal made by Judge Hood.

On February 22, 2021, the State made its return to the motion to amend and supplemental motion to amend, opposing the amendments. Specifically, the State opposed Petitioner's motion to amend and supplement to motion to amend because both are in violation of the Court of Appeals opinion, which explicitly enumerated the two grounds on which the case had been remanded.

On March 30, 2022, the State filed and served a second amended return following the remand and rehearing memorandum, asserting that Petitioner is procedurally barred from raising these claims in post-conviction relief, does not meet the heightened standard required for habeas corpus relief, and that the claims fail on the merits.

A hearing on this action was convened on April 1, 2022, before the Honorable Grace Gilchrist Knie, circuit court judge. At this hearing, a discussion was held on the record between the parties and the Court concerning pending Administrative Law Court actions involving some of the same claims regarding the South Carolina Department of Corrections' interpretation and

calculation of Petitioner's sentence, including whether the Department correctly determined Petitioner was not entitled to earned work or good-time credits. At that time, counsel for Petitioner made an oral motion to stay the Administrative Law Court proceedings to allow adjudication of the claims within the post-conviction relief action. The court gave Petitioner ten days to file such a motion and, following service of that motion, allowed the State twenty days to respond to the written motion.

On April 11, 2022, Petitioner filed a "Motion to Allow Consolidation of All Claims and Issues in Conjunction with Amendment," wherein Petitioner asked that the Administrative Law Court proceeding be stayed pending resolution of his motion to amend and (presumably, only if the motion was granted) the ultimate resolution of this post-conviction relief proceeding. In this motion, Petitioner also asked the post-conviction relief court to allow further amendments of this underlying post-conviction relief action to encompass all claims raised to the Administrative Law Court, including claims beyond the credit-related claims.

In response to the motion-to-stay portion of Petitioner's motion, the State noted that the motion was moot, as the Administrative Law Court had already issued an order holding the matter in abeyance. This Administrative Law Court order, filed April 19, 2022, held that action in abeyance "pending the resolution of the circuit court's ruling on the motion to amend Appellant's pleadings in the PCR matter." The State also opposed the motion to further amend the pleadings to encompass all issues from the Administrative Law Court Action to the extent it attempted to litigate claims beyond the two enumerated issues set forth by the Court of Appeals in its opinion.

On June 17, 2022, by filed order, Judge Knie denied Petitioner's motions to amend and consolidate. The order denied the relief sought by Petitioner as part of those motions, to wit, consideration of all of Petitioner's claims of varied nature and sort that have been raised or attempted to be raised directly in that captioned matter, as well as those raised before the

Administrative Law Court, including habeas corpus.

On March 28, 2023, an evidentiary hearing was convened before the Honorable Daniel Coble at the Richland County Courthouse. By filed order on May 10, 2023, Judge Coble found that the action was a post-conviction relief action, granted the State's motion to dismiss based on procedural bars, and Petitioner "may choose to attempt to have his habeas petition heard in the Supreme Court or have his hearing in this [c]ourt." Petitioner did not appeal Judge Coble's order.

II. CURRENT CLAIMS RAISED IN PETITION

Petitioner asserts three grounds for relief:

- (1) The Trial Court lacked jurisdiction to impose a consecutive twenty-five-year sentence during the hearing on August 9, 1990.
 - (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.
 - (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.
- (2) SCDC violated Carpenter's right to due process when it unilaterally modified and increased Carpenter's sentence in 2011.
- (3) SCDC violated Carpenter's right to equal protection through its intentionally disparate treatment of Carpenter as compared to others similarly situated.

Respondent contends each claim fails to meet the extraordinary standard required for habeas relief in this Court's original jurisdiction.

III. ARGUMENT

Under Rule 245, SCACR, this Court may assume original jurisdiction when " ... the public interest is involved, or if special grounds of emergency or good reasons exist why the original jurisdiction of the Supreme Court should be exercised ... " See Art. V, § 5; S.C. Const. Art. 1, § 18.; § 14-3-310 (1976); see also Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000); Key v. Currie, 305 S.C. 115,406 S.E.2d 356, 357 (1991). Rule 245, SCACR, also provides that this Court "will not entertain matters in its original jurisdiction when the matter can be determined in a lower

court in the first instance, without material prejudice to the parties."

Historically, a petition for writ of habeas corpus was a common law writ for relief and only available to attack the jurisdiction of the court that imposed the sentence. See Williams v. Ozmint, 380 S.C. 473, 476, 671 S.E.2d 600, 601 (2008) (citing Ex parte Klugh, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court whose judgment is challenged)). The writ of habeas corpus is now used to test the legality of a prisoner's detention. Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting Walker v. Wainwright, 390 U.S. 335, 336, 88 S. Ct. 962, 963 (1968)). Habeas relief is seldom used and acts to ensure fundamental constitutional rights. For these reasons, a defendant bears a much higher burden in a habeas proceeding. Ozmint, 380 S.C. at 477, 671 S.E.2d at 602.

A writ of habeas corpus is reserved for only the most serious of constitutional violations, which, in the setting, constitute a denial of fundamental fairness shocking to the universal sense of justice. Id. (citing Green v. Maynard, 349 S.C. 535, 538, 564 S.E.2d 83, 84 (2002)); see also Butler, *supra*. In light of that standard, not every constitutional error will justify issuance of the writ. McWee v. State, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (quoting Green v. Maynard, 349 S.C. at 538, 564 S.E.2d at 84). Instead, this Court will grant a writ of habeas corpus only under unique and compelling circumstances. Id. Writs in the original jurisdiction are available only when other remedies are either inadequate or unavailable. See Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998).

Further, this Court has recognized the interplay of post-conviction relief actions and petitions for writ of habeas corpus in the original jurisdiction of this Court stating, "Section 17-27-20(b) [the Uniform Post-Conviction Procedure Act] states that [it] 'comprehends and takes the

place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence' and provides [it] 'shall be used exclusively in the place of them'." Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Because the express desire of the South Carolina Supreme Court is to "limit habeas petitioners and funnel issues raised by inmates challenging their conviction or sentence into the post-conviction relief process", the Court has held that "[h]abeas corpus is available [only] once the petitioner has exhausted all post-conviction remedies." Al-Shabazz, 338 S.C. at 365, 527 S.E.2d at 784; Simpson 329 S.C. at 46, 495 S.E.2d at 431. The Court, however, has retained the ability to entertain petitions for writs of habeas corpus in its original jurisdiction and thereby grant relief in "those unusual circumstances where there has been a violation which ... constitutes a denial of fundamental fairness shocking to the universal sense of justice." Simpson 329 S.C. at 46, 495 S.E.2d at 431. Therefore, a writ of habeas corpus will only be granted under "unique and compelling circumstances" when other remedies are inadequate or unavailable.

Because Petitioner has already litigated these exact issues through multiple post-conviction relief actions, an Administrative Law Court action, and multiple appeals, the claims are procedurally barred and do not warrant the extraordinary relief now sought. See Al-Shabazz, *supra*; Simpson, *supra*.

A. The Guilty Plea Court Retained Jurisdiction to Impose the Consecutive Sentence

Petitioner's first claim rests on the erroneous assertion that Judge Cottingham lost jurisdiction at the adjournment *sine die* of the June 1990 term of court. This argument ignores both the explicit terms of the plea agreement and the unique procedural framework of State Grand Jury cases. Petitioner's jurisdiction claim is meritless.

The written plea agreement, accepted by the court on April 7, 1990, expressly conditioned

the concurrent sentencing recommendation on Petitioner's full cooperation. The agreement authorized the State to request consecutive sentences if Petitioner breached the agreement and failed to cooperate. Sentencing on Indictment 90-GS-47-05-001 was therefore intentionally and lawfully deferred pending an evidentiary hearing on compliance. Judge Cottingham retained jurisdiction over the matter until he issued the sentence on August 9, 1990. Judge Cottingham further retained jurisdiction after this hearing, giving Petitioner another chance to cooperate and abide by the terms of the plea agreement. On February 3, 1992, a final hearing was held, during which Judge Cottingham, upon motion from the State seeking Judge Cottingham to discharge jurisdiction relative to Petitioner's potential cooperation, issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter, which had previously been conferred by Chief Justice Gregory pursuant to his 1989 order.

Notably, this is fundamentally different from State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008), where the trial court attempted to vacate an already-final sentence after the term of court ended without any retained jurisdiction or plea-agreement mechanism. Here, the deferral was part of the bargained-for exchange and was expressly contemplated by the parties and the court.

Moreover, Judge Cottingham was specially assigned by order of Chief Justice George Gregory (November 15, 1989) to "dispose of all matters ... arising from State Grand Jury Investigation No. 89-005." That assignment was not limited to a single term of court; it provided continuing authority over the assigned indictments. The State Grand Jury statutes and administrative orders governing State Grand Jury proceedings operate outside the ordinary weekly "term of court" limitations that apply to routine general sessions matters. See S.C. Const. art. V, §

4; S.C. Code Ann. § 14-7-1630. Petitioner's attempt to import ordinary term-of-court rules into this State Grand Jury context is misplaced.

At the August 9, 1990, hearing, Petitioner was represented by counsel, testimony was taken, and Judge Cottingham made specific findings that Petitioner had willfully breached the plea agreement. Judge Cottingham retained jurisdiction to give Petitioner one more chance to abide by the terms of the plea agreement. Petitioner failed a second time to abide by the terms, and Judge Cottingham lawfully affirmed the consecutive sentence on February 3, 1992. The consecutive sentence imposed was within the statutory range for the offense to which Petitioner had pled guilty. No constitutional violation occurred, much less one that shocks the universal sense of justice.

Accordingly, this claim is without merit, and does not rise to the level of a constitutional violation, let alone one shocking to the universal sense of justice, thus, the petition should be denied on this issue.

B. SCDC's 2011 Correction of Petitioner's Sentence Records Did Not Violate Petitioner's Due Process Rights

Petitioner next complains that the South Carolina Department of Corrections' (SCDC) 2011 correction of his "max-out" date to reflect the true mandatory day-for-day fifty-year sentence violated his due process rights. This claim is foreclosed by statute and precedent.

The trafficking statutes in effect at the time of Petitioner's offenses, S.C. Code Ann. § 44-53-370(e) (Supp. 1988), imposed a mandatory minimum term of twenty-five years with no eligibility for parole, suspension, probation, or good-time/work credits until the full term was served. The early-1990s SCDC computer system erroneously failed to apply the "day-for-day" rule to pre-1996 trafficking cases. The 2011 statewide audit, which was triggered by an unrelated inmate's complaint, simply corrected the records for Petitioner and four other similarly situated inmates.

Petitioner's reliance on Tant v. S.C. Dep't of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014) is misplaced. The Court in Tant held that when SCDC alters sentence records, it must provide notice and an opportunity to be heard. Petitioner received written notice of the correction in 2011, filed internal grievances, pursued an Administrative Law Court action and appeal, and litigated the issue through the 2016 circuit-court action and subsequent post-conviction relief proceedings. He has received far more process than Tant requires.

Additionally, Petitioner's reliance on Furtick v. S.C. Dep't of Corr., 374 S.C. 334, 649 S.E.2d 35 (2007), is inapposite. Petitioner was statutorily ineligible for good-time and work credits. SCDC did not arbitrarily revoke credits Petitioner had a legal right to earn; it corrected the erroneous award of credits he was never entitled to receive. Simply put, no liberty interest protected by due process was implicated.

Accordingly, the claim fails on the merits, and does not rise to the level of a constitutional violation, let alone one shocking to the universal sense of justice, thus, the petition should be denied on this issue.

C. No Equal Protection Violation Exists

Finally, Petitioner asserts an equal-protection claim based on the fact that certain other inmates received good-time/work credits or earlier release due to the same computer error that initially benefited Petitioner. This claim is legally frivolous.

To prevail on an equal-protection claim, Petitioner must show both (1) treatment different from similarly situated persons and (2) that the difference resulted from intentional or purposeful discrimination. King v. Rubenstein, 825 F.3d 206, 220 (4th Cir. 2016). Petitioner identifies no class of inmates who were lawfully entitled to credits while he was denied them. Instead, the complained-of disparity arose from an administrative clerical error that SCDC later corrected. The

fact that some inmates "got lucky" before the error was discovered does not constitute intentional discrimination by the State.

Furthermore, the statute treats all defendants convicted of trafficking in the same manner: mandatory day-for-day service with no good-time or work credits. Petitioner's equal-protection claim is nothing more than dissatisfaction with the correction of a systemic mistake. It does not rise to the level of a constitutional violation, let alone one shocking to the universal sense of justice.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

IV. CONCLUSION

Petitioner has received exhaustive judicial review of these claims through direct appeals, multiple post-conviction relief actions, federal habeas review, and an Administrative Law Court proceeding. The claims now raised are repetitive, procedurally barred, and substantively without merit. They do not present the rare, shocking to the universal sense of justice, and compelling constitutional violation(s) required for this Court to grant the extraordinary writ of habeas corpus in its original jurisdiction.


WHEREFORE, Respondent respectfully prays that this Court deny the Petition for Writ of Habeas Corpus in its entirety and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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