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JUN 01 2026

In The Court of Appeals In South Carolina S.C. SUPREME COURT

The State of South Carolina
Plaintiff,

Indictment Numbers

VS.

Robert Southard

Defendant,

2025-GS-40-134

2025-GS-40-135

2025-GS-40-136

2025-GS-40-137

2025-GS-40-138

Defendant's Appeal of Trial Court's Denial of
Defendant's Motion to Discharge from Pretrial
Confinement Based on State's Failure to Abide by
Speedy Trial Demand

Comes now Defendant, Robert Southard, appealing
the trial court's dismissal of Defendant's Motion
to Discharge Based on State's Failure to Abide by
the South Carolina Statute 17-23-90.

Defendant acknowledges that this is an attempt to
appeal an interlocutory order, and as a general
rule an interlocutory order is not immediately
appealable. *Hamm v. South Carolina Pub Serv. Comm'n*,
312 S.C. 238 (1994).

In South Carolina it is well-established that Appeals taken from interlocutory orders are not allowable for policy reasons, the primary being to not delay justice, *State v. McKethrick*, 13 S.C. 439 (1880); *State v. Hughes*, 56 S.C. 540 (1900).

However, in this case, it is Defendant alleging the State is delaying justice, and in so doing, denying Defendant his right to a Speedy Trial, or in the alternative, access to the commands of the Speedy Trial Act that leave no room for discretion by the trial judge *State v. Campbell*, 277 S.C. 408 (1982).

In *State v. Langford*, the South Carolina Supreme Court held, *inter alia*, that a court's decision on whether to dismiss on Speedy Trial grounds is reviewed for abuse of discretion *State v. Langford*, 400 S.C. 421 (2012). And in *Fields v. J. Haynes Waters Builders Inc.* the same court defined an abuse of discretion, saying "[the abuse] occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." *Fields v. J. Haynes Waters Builders Inc.*, 376 S.C. 545, 555 (2008).

Here, the trial court dismissed Defendant's Motion with no stated explanation. By not providing a reason, Appellate Courts, and Defendant, are left to speculate as to the actual reason, which means a determination cannot be made as to whether the reason constitutes an error of law, is based on factual findings without evidentiary support, or another valid reason. Thus, not giving a reason is in itself, an abuse of discretion. Especially since the language of the Speedy Trial Act, and South Carolina Supreme Court precedent interpreting that Act, leave no room for discretion where a violation occurs.

As a sidenote, Defendant was told by Counsel that this appeal most likely would be barred by the general rule against interlocutory appeals, but Defendant believes this issue is too important, and ultimately would have been required anyway if Defendant waited until sentence was imposed.

Wherefore, Defendant prays this Court reverse the trial court's decision, and grant Defendant's Motion for Discharge from Pretrial Confinement as if he had been acquitted, *State v. Campbell*, 277 S.B. 408, 409 (1982).

Remanding to give the trial court an opportunity to belatedly give a reason should not be considered an option, given that it is their inaction that ultimately lead to this appeal.

Executed on 2/16/2026

Respectfully Submitted,

Robert Sutherland

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

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

The State of South Carolina)

vs.)

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

Robert Southard,)
Defendant.)

2025 JAN -3 AM 10:30
JAN 03 2025
CLERK OF COURT

ATTN: Morgan Monroe, Fifth Circuit Solicitor's Office

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

PROCEDURAL HISTORY

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

LAW AND ARGUMENT

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

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

S.C. Code Ann. § 17-23-90 (2014).

Therefore, our Supreme Court holds that, “[s]ection 17-23-90 provides for discharge from imprisonment when [1] a person is committed for a felony, [2] demands to be brought to trial, and [3] is not indicted or¹ tried by the second term following his commitment.” *State v. Campbell*, 277 S.C. 408, 409 (1982). “[T]he statutory reference to discharge [is] interpreted as requiring the prisoner ‘...be as unrestrained as if upon his trial he was acquitted.’” *Id.* (quoting *State v. Fasket*, 39 S.C.L. (5 Rich.) 255, 257 (1852)). Therefore, the statute does not provide for judicial discretion, as exists in a bail hearing—only enforcement of the law. *State v. Fasket*, 39 S.C.L. 255, 256 (S.C. App. L. 1852) (“the mandate for the discharge of the prisoner is peremptory; no discretionary power is reserved to the judge to require bail on the discharge of the prisoner.”). This has been the function of the right for hundreds of years. *State v. Hunsberger*, 418 S.C. 335, 341 n.3 (2016) (“This statute is derived from Section 7 of the Habeas Corpus Act of 1679... [it] provides that, upon demand, a prisoner who is not indicted or tried by the second term following the demand be released without bail.”).²

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

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

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

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

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

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

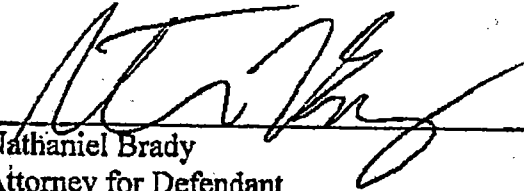
In moving for discharge under the statute, Mr. Southard is not requesting that the Court engage in a balancing test or wrestle with a matter of discretion. Under the statute, "the mandate for the discharge of the prisoner is peremptory; no discretionary power is reserved to the judge to require bail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

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

CONCLUSION

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

Respectfully submitted,



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

Columbia, South Carolina

This 3 day of January, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NUMBER _____

WARRANT NUMBER 2024 A4010202542, -43, -44

State of South Carolina,

2024 A4010600044, -45

vs.

ORDER

Robert Southard

Defendant.

CHARGE(S): CRIMINAL SEXUAL CONDUCT WITH MINOR - First Degree (two counts),
UNLAWFULLY PLACE CHILD AT RISK OF OR CAUSE HARM (three counts)

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

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

The following motions were

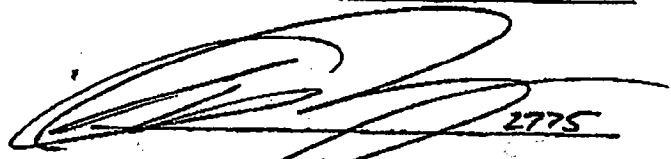
presented: Defense's motion for discharge.

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

The Court determined:

Defense's motion is denied.

IT IS SO ORDERED



Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina

This 14th day of February 2025

JEANETTE W. MCBRIDE
C.C.R., G.S., & F.C.

2025 FEB 18 PM 4:16

FILED
RICHLAND COUNTY



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 25, 2026

Ms. Cydney Evonne Clark, Esquire
1701 Main St Suite 103
Columbia SC 29201

Re: The State v. Robert Southard
Appellate Case No. 2026-000403

Dear Counsel:

This Court received your partial correction of the deficiencies outlined in this Court's February 26, 2026 letter. However, upon reviewing your client's notice of appeal, the following deficiency remains under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Morgan Landers Monroe, Esquire
Wanda H. Carter, Esquire
Robert Southard

PUBLIC DEFENDER REQUEST/CONTACT FORM

This form is the best way to provide new information to your attorney. Please write only general information to your Attorney. **DO NOT INCLUDE CONFIDENTIAL INFORMATION IN YOUR MESSAGE** – Someone other than your Attorney may read it! If you do not have an Attorney, you can use this form to request a Public Defender.

Name: Robert Southard

Today's Date: 4-2-26 Alias: N/A

Date of Birth: 2/18/77 Dorm: Foxcroft

Charge(s): Upon Request

WHO IS YOUR PUBLIC DEFENDER?

Name of Attorney: Cydney Evonne Clark, Esquire

I do not know my Public Defender's name.

I am requesting a Public Defender.

Message for Your Attorney:

I recieved a letter dated March 25 2026 from the South Carolina Court of Appeals referencing Appellate Case No. 2026-000403 saying a deficiency remains that a proof of service has not been provided in the format shown by Form 7 in Appendix C part II of the SCACR.

I hope that this has been addressed as they state the case will be dismissed within (10) days of the date of the letter.

Thanks, Just touching base with you.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 15, 2026

Ms. Cydney Evonne Clark, Esquire
1701 Main St Suite 103
Columbia SC 29201

Re: The State v. Robert Southard
Appellate Case No. 2026-000403

Dear Counsel:

The Court received your attempted deficiency corrections on April 8, 2026; however, you still must provide a proof of service showing service upon the respondent. You must serve and file the proof of service within ten (10) days of the date of this letter, or this appeal will be dismissed.

Very truly yours,

Catherine Harrison, deputy
CLERK

cc: Robert Southard, 659565
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Morgan Landers Monroe, Esquire
Wanda H. Carter, Esquire

PUBLIC DEFENDER REQUEST/CONTACT FORM

This form is the best way to provide new information to your attorney. Please write only general information to your Attorney. **DO NOT INCLUDE CONFIDENTIAL INFORMATION IN YOUR MESSAGE** – Someone other than your Attorney may read it! If you do not have an Attorney, you can use this form to request a Public Defender.

Name: Robert Southard

Today's Date: 4-21-26 Alias: N/A

Date of Birth: 2/18/77 Dorm: Uniform Pod C

Charge(s): Upon Request

WHO IS YOUR PUBLIC DEFENDER?

Name of Attorney: Ms. Cydney Evonne Clark, Esquire

I do not know my Public Defender's name.

I am requesting a Public Defender.

Message for Your Attorney:

I recieved another letter dated April 15 2026
from the South Carolina Court of Appeals
referencing Appellate Case No. 2026-000403
saying there was an attempted deficiency correction
on April 8th 2026 however, we have still not provided
the proof of service, service, upon the respondent in
the format shown by Form 7 in Appendix C part II
of the SCACR,

Please address this as the case will be dismissed if
we fail to provide the proof of service within
10 days from April 15th 2026.

Thanks just reaching out as this is very important to me.

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Southard, Appellant.

Appellate Case No. 2026-000403

ORDER

Appellant filed a notice of appeal on February 23, 2026. Because a criminal defendant may not appeal until a sentence has been imposed, the appeal is dismissed. *See State v. Miller*, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

_____, J.
FOR THE COURT

Columbia, South Carolina

cc:

Robert Southard, 659565
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Morgan Landers Monroe, Esquire
Cydney Evonne Clark, Esquire
Wanda H. Carter, Esquire

FILED
Apr 28 2026
