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SC Court of Appeals

VIA FIRST CLASS MAIL

Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

VIA INTER-DEPARTMENT DELIVERY

Hon. Angie M. Bryant, Clerk of Court
York County General Sessions
P.O. Box 649 -1675 I-G York Highway
York, South Carolina 29745



Re: State v. Brenden Demarkus Johnson, 2022-GS-46-02262, 2023-GS-46-02774

Dear Ms. Kitching and Ms. Bryant:

Please find enclosed an original and one copy of the transcripts from hearings held in this matter on 09.14.2026 and 09.16.2026. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope (or via inter-departmental delivery, for York County Clerk of Court), in accordance with your normal procedures.

Sincerely,

Daniel K. Porter

Enclosures as stated

Cc: J. Todd Rutherford, Ugonna Udogwu (*via mail delivery*)
M. Farthing, Senior Assistant Deputy Attorney General (*via email*)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
CASE NO. 2022-GS-46-02262

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-)
)
BRENDEN DEMARKUS JOHNSON,)
)
Defendant.)

TRANSCRIPT OF RECORD

September 14, 2026
September 16, 2026
York, South Carolina

ANGIE M. BRYANT
CLERK OF COURT
YORK COUNTY, SC

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2026 OCT 23 AM 11:56

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge.

A P P E A R A N C E S:

Mr. Daniel Porter
Deputy Assistant Solicitor
Sixteenth Circuit Solicitor's Office
Attorney for the Plaintiff
York, South Carolina

Mr. Todd Rutherford
Attorney at Law
Attorney for the Defendant
Columbia, South Carolina

Ms. Ugonna Udogwu
Assistant Public Defender
Sixteenth Circuit Public Defender's Office
Attorney for the Defendant
York, South Carolina

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Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. Mr. Porter.

2 MR. PORTER: Thank you, Your Honor. May it please the
3 Court. We're back on the record in *State versus Brenden*
4 *Demarkus Johnson*. He's here today with Ugonna Udogwu of the
5 Public Defender's Office and Todd Rutherford of the South
6 Carolina Bar. We agree upon 66 days in time served credit
7 and the State does have a drug report on this case. He's
8 entering a plea of -- he's being sentenced today.

9 We handled the plea portion of this in front of Judge
10 Morgan on September 3rd, last court term. He is pleading to
11 2023- -- or he is being sentenced on 2023-2774, true bill
12 indictment for murder. He's pleading to voluntary
13 manslaughter; 2020-7716, true bill indictment for unlawful
14 carrying of a pistol. He's pleading to the same. In 2022,
15 a direct indictment, true bill, he's pleading to possession
16 with intent to distribute methamphetamine second offense.

17 The negotiation is six years concurrent on the
18 indictment ending in 74 and 16, time served on the unlawful
19 carry. We have complied with the Victims Rights Act. The
20 victim, Jennifer Robinson's mother, is present by phone and
21 her sister Ashley is present here in the courtroom. Ms. Noe
22 would like to speak at the appropriate time. That's N-o-e.

23 THE COURT: Okay.

24 MR. RUTHERFORD: I'm sorry. Begging the Court's
25 indulgence.

1 (Whereupon, counsel conferred off the record.)

2 MR. RUTHERFORD: I'm sorry. The solicitor stated that
3 we agree on 66 days. We agree on at least 66 days. There's
4 an argument to be made later, but I didn't want Your Honor
5 to see that we were arguing with something, but I think we
6 had agreed to something else. So it's --

7 THE COURT: Okay. So at least 66 days, perhaps another
8 number?

9 MR. RUTHERFORD: That's correct, Your Honor.

10 THE COURT: All right. But the negotiation of the
11 sentence, it's just a matter of how much credit?

12 MR. RUTHERFORD: That's correct, Your Honor.

13 THE COURT: I got it. All right. You're Brenden
14 Demarkus Johnson?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: You appeared in front of Judge G. D. Morgan
17 a couple weeks ago.

18 MR. JOHNSON: Yes, sir.

19 THE COURT: You're here before me this afternoon. I'm
20 Eugene Griffith. I'm from down Newberry way. Here for the
21 sentencing portion. You pled two weeks ago, came back to be
22 sentenced. You've been incarcerated since. Is that
23 correct?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: All right. So for the purpose of

1 sentencing is I'm going to listen to your lawyers, one or
2 both, in mitigation as to how to calculate the days, but as
3 I understand the result is the carrying a pistol, time
4 served. So there's really not anything for me to decide on
5 that. I give you the credit for the 66 days or perhaps
6 more. On the other two, the sentence is six years, but it's
7 kind of going to heard both sides as to how many days credit
8 you may be entitled to.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Is that your understanding?

11 MR. JOHNSON: Yes, sir.

12 THE COURT: Now, do you agree with me that on September
13 3rd you pled guilty, waived all your rights in front of
14 Judge Morgan?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: All right. And so after today's date, once
17 I impose sentence, that will be the time that will trigger
18 your notice of right to reconsider and/or your right to
19 appeal. Okay?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: You've got a limited number of days. I
22 believe it to be 30 on both those issues, so after the
23 sentence comes out of my hand, that's when that clock starts
24 to run. Okay?

25 Now, based on what I've said thus far, do you need to

1 speak with your lawyers yet? You got -- here's what I want
2 to make sure, they're your advocates.

3 MR. JOHNSON: Uh-huh.

4 THE COURT: Any time you need to talk to them, you say,
5 Judge, hang on one second, you talk to them. Okay?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Now, I'm going to hear from the victim's
8 mother, is that right, Ms. Noe,---

9 MR. PORTER: Yes, sir.

10 THE COURT: ---first. Then I'm going to come back and
11 hear from your lawyers and/or any people you want me to hear
12 from. Okay?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: All right. Mr. Porter, let me hear from
15 Ms. Noe.

16 MR. PORTER: Yes, sir. Ms. Noe, are you with me?

17 MS. NOE: Yes, sir.

18 MR. PORTER: Okay. If you'd please introduce yourself
19 and tell the Judge -- it's now your time to speak.

20 MS. NOE: Okay. I'm Jennifer Noe's mom, Patricia Noe.
21 I really don't know what to say, just that I promised my
22 daughter that I would give her, you know, justice for her
23 and I'm not doing it and, I -- you know, I don't understand
24 how somebody can kill my baby and get away with it. It
25 hurts real bad. I'm just not understanding (weeping). I

1 miss that girl more than anything in this world. I care to
2 (indiscernible) (weeping). We all miss her and we can't
3 even get justice for her. I mean, you know, if we could
4 just find out why. I understand, you know, y'all can only
5 do so much, but I do hope he gets the max, 'cause nothing
6 will ever, ever bring my daughter back.

7 THE COURT: Ms. Noe, very sorry for your loss.

8 MS. NOE: Thank you.

9 THE COURT: All right, Mr. Porter.

10 MR. PORTER: Thank you, Ms. Noe.

11 THE COURT: Anybody else?

12 MR. PORTER: I don't believe Ashley would like to
13 speak. I will say, Your Honor, that in our conversations
14 leading into this, she echoed Ms. Noe's sentiment that she
15 did not feel like any further clemency should be granted
16 towards Mr. Johnson.

17 Your Honor, you didn't hear the facts of the case, but
18 these cases that Mr. Johnson's pled to, from the State's
19 perspective, were triable cases both ways and that is the
20 reason this number has been agreed to. I think this is a
21 just resolution based on the facts that we would be able to
22 present in court and the number of trials that we would have
23 had with Mr. Johnson. He did plead to *Alford* to the
24 voluntary, but I think the six years is where it should be.
25 The legislature has spoken about the manner of service. The

1 legislature's clearly passed a law and, you know, if the
2 Court of Appeals wants to take that up, they can, but as of
3 today the law is that if you commit a crime out on bond
4 after June 20th of 2023, you don't get credit. So we would
5 ask for you to deny him the credit for the eleven -- 1,182
6 days of time served credit that he would have received under
7 the old law. I believe that he should not receive that
8 credit and he should serve the remainder of his six-year
9 sentence.

10 THE COURT: All right. Give me the timing on these two
11 things. There's a 2020 indictment, a '22 indictment and a
12 '23.

13 MR. PORTER: Yes, sir.

14 THE COURT: Give me the timing on those three, please.

15 MR. PORTER: So, Your Honor, on November 20th of 2020,
16 he failed to stop and wrecked his car on Baynes(ph) Trail in
17 Fort Mill and they found some drugs on him. That's the
18 possession with intent to distribute.

19 THE COURT: And that was what date?

20 MR. PORTER: That was November 20th of 2020. He was
21 released on bond two days -- four days later, I believe, and
22 then there were some other charges that we're dismissing
23 per plea. So he actually had four arrests that he had been
24 arrested on prior to the homicide, the murder, and then on
25 March 25th of 2023, Ms. Robinson was shot. He pled Alford

1 so I'm using that language. We would have presented
2 evidence that he admitted to another person that he was in
3 the car and then a car linked to him was seen with gunshots
4 coming out of it in the area where she was found. That
5 happened -- he was arrested on April -- I think it was April
6 19th in Charlotte and I gave him credit from April 19th. He
7 -- I did the calculation for the 1,182, I believe, from the
8 April 19th date when that hold would have been put in place
9 in Charlotte. Again, my position is the legislature's
10 spoken. He's not entitled to that credit. We've already
11 come to a pretty lean resolution from the State's
12 perspective on what he faced. He was life eligible had we
13 gone to trial on all three of these charges. There was
14 another drug case as well that's been dismissed. So I'd ask
15 the Court to take that into consideration.

16 THE COURT: But he's been in custody since April 19th
17 of '23?

18 MR. PORTER: Yes, sir.

19 THE COURT: And that's the 1,100 days or whatever you
20 said?

21 MR. PORTER: Yes, sir. The 1,100 days is back to June
22 20th of 2023, when the bond law was passed. I gave him
23 credit up and to that point, because under the old law, I
24 believe he would have been entitled to it, but June 20th of
25 2023, that date is when the legislature said this is the

1 manner of service of a pretrial case. So I felt like that
2 is the date that it should have cut off. So the 1,182 is
3 back to June 20th of 2023.

4 THE COURT: Okay. I kind of have the time line. So
5 Ms. Udogwu or Mr. Rutherford either one, y'all want to --

6 MS. UDOGWU: Well, Your Honor, I understand that the
7 State wants to back date that time served credit to stop
8 June 20th, but he was arrested in April. This was before
9 that new bond statute was passed, so I think he -- he's
10 entitled to that credit starting from April up to now, Your
11 Honor. Again, I don't believe the law is meant to be
12 interpreted as retroactive towards that time, as I
13 interpret, and I think the Court should interpret it as
14 such, Your Honor. So I think he's entitled to 1,239 days.
15 I think that's the number I have or --

16 THE COURT: Your number's 1,239?

17 MS. UDOGWU: Yes, Your Honor.

18 MR. RUTHERFORD: And, Your Honor, again, that's based
19 on his arrest from the murder.

20 MS. UDOGWU: Yes, Your Honor.

21 MR. RUTHERFORD: The General Assembly has never
22 instituted a retroactive criminal law, as that would be
23 unconstitutional and we did not do so in this case either.
24 He was already in custody when the new bond law went into
25 effect and, Your Honor, even after that, my client came up

1 on several bond motions, which we waived at the moment,
2 still negotiating and so then you get into PCR issues as to
3 whether we should have gone forward to force the State at
4 that point to either win or lose on a bond motion or is it a
5 PCR offense that we said, hold off, don't go forward at this
6 point, we'll waive. At every juncture that occurred and
7 there were several times that it came up, but the most
8 effective argument in this case is that the legislature does
9 not pass retroactive criminal laws to punish somebody who is
10 already in custody whose conduct, even if true, allegedly
11 occurred prior to the General Assembly passing that law and
12 so it has never occurred prior to this and this is not that
13 case where the General Assembly said, oh, if you're already
14 in custody, you're not going to get credit for something
15 that you allegedly did months ago.

16 THE COURT: So to make sure I'm right, the event was
17 3/25 of '23. There was an event, loss of life to which he's
18 pleading guilty. His arrest was April 19th of that same
19 year, so a month -- roughly a month later?

20 MR. PORTER: Yes, sir, Your Honor.

21 THE COURT: Then the bond law was signed by the
22 Governor June 20th, a couple months after that?

23 MR. PORTER: Yes, sir.

24 THE COURT: Okay. Now, I got the timing down. So
25 y'all's argument is retroactivity, presumptively, if the law

1 was already in effect, he would be aware committing a crime
2 while on bond would cause all sort of issues. He was
3 already in custody when the bond law was signed by the
4 Governor. Y'all's argument is the law came into effect June
5 20th and that terminates his ability to count those pretrial
6 confinement days?

7 MR. PORTER: Yes, Your Honor, and from the PCR
8 perspective, I also add that this man's life eligible three
9 times over, so there was a substantial risk and also he was
10 out on four bonds. So I don't think either of the attorneys
11 could be characterized as being ineffective for not having a
12 bond motion in that circumstance. I think it would be very
13 unlikely that he would have been granted a bond based on the
14 innocent victim in this case and the four bonds that he was
15 out on, in addition to the fact the risk of, if he had
16 gotten out, you know, he could be facing three life trials.
17 So I do have to say I think it -- not much PCR issue here if
18 this were to go up.

19 THE COURT: So the serious --

20 MR. PORTER: But the crux of it is not --

21 THE COURT: -- the serious or most serious would be the
22 voluntary and then a couple drugs charge that were from
23 separate dates?

24 MR. PORTER: Yes, Your Honor. There were two strikes
25 on the drugs and then he had two distributions of crack and

1 proximity charges from '18 and an attempted armed robbery
2 from '20, so he's life eligible on three charges. So I got
3 to protect my defense attorneys here. I don't think there's
4 a PCR issue laying around in this, but you did summarize my
5 point very well, Your Honor. I appreciate that.

6 THE COURT: Okay. I think I've said this before in
7 this courtroom, this new bond law's created a lot of
8 interesting conversations we've had among different
9 attorneys with me presiding. It's interesting there's so
10 many different interpretations, but the sentence is six
11 years no matter what?

12 MR. PORTER: Yes, sir.

13 THE COURT: And it's six years, 85?

14 MR. PORTER: Yes, sir.

15 THE COURT: Okay. On the voluntary, not necessarily
16 the possession of meth second. That can be --

17 MR. PORTER: That will be parolable. Yes, sir.

18 THE COURT: That will be parolable, but the voluntary
19 manslaughter will carry the weight of the sentence. That
20 would be the community supervision release date would be
21 calculated off of that.

22 MR. PORTER: Yes, sir.

23 THE COURT: Him being parole eligible is basically a
24 nullity, but with the community supervision issue.

25 All right. The plea was already accepted. I'm

1 imposing a sentence of six years on indictment 2774 and
2 2262, first is voluntary, the second one's possession with
3 intent meth, carrying a pistol, time served. That's 66
4 days. That's not a mystery.

5 Mr. Porter, I think the legislation intent's clear, but
6 I don't think they can go back, pick it up in retrospect and
7 -- I just don't. I think it's, prospectively, from the time
8 the Governor signed it, if he'd have done this crime on the
9 21st of June, you're right, 'cause then he'd have known or
10 maybe didn't know, but the law would have been in effect
11 then, so I believe he's entitled to 1,239 days that Ms.
12 Udogwu presented to the Court and I will give him credit for
13 those days and since I'm here all week, if y'all want to
14 make a motion to reconsider and outline it, I don't mind you
15 doing that, because that's a pretty big discrepancy of days,
16 but I don't believe criminal laws, even in sentencing, are
17 retroactive like that. I just don't believe that's -- seems
18 like my understanding of everything that I've been involved
19 with in the 35 years I've been doing this is the defendant
20 gets the benefit either way. If it's good for him, he gets
21 it. If it's bad for him, he doesn't get punished for it.
22 It's -- new law is new law, so I'm sorry, but that's going
23 to be my ruling. So six years on both, concurrent, 1,239
24 days credit. I would expect a motion to reconsider and so
25 if you don't want one, I understand. If you want to, I'll

1 certainly read it. Copy to opposing counsel if you do.

2 Tough stuff. That's a tough call, but that's my ruling.

3 MR. PORTER: Thank you, Your Honor.

4 MR. RUTHERFORD: Thank you, Your Honor.

5 (Whereupon, this proceeding was adjourned at 3:23 P.M.

6 and reconvened at on September 16, 2026 at 1:23 P.M.)

7 THE COURT: All right. I got the indictments. Mr.

8 Porter, you had a timely filed during this court term, a

9 motion to reconsider,---

10 MR. PORTER: Yes, sir.

11 THE COURT: ---which the State has the authority to

12 do.

13 Mr. Rutherford, you've got a copy.

14 Ms. Udogwu, you got a copy of his motion to reconsider?

15 MS. UDOGWU: Yes, Your Honor.

16 THE COURT: All right. Mr. Porter, make your record.

17 MR. PORTER: Thank you, Your Honor. I'll let the filed

18 copy stand on -- for itself. I would point the Court to

19 *Dozier* and *Sullivan* that are mentioned in my brief. Both of

20 those, the South Carolina Supreme Court seemed to

21 contemplate that a statute that was enacted after the

22 offense date could change the manner of the defendant's

23 service. *Sullivan* case pertains to parole eligibility based

24 upon violent offenses and their classification and the

25 *Dozier* case relates to, actually, a time-served credit case

1 where the legislature enacted the original version of 24-13-
2 40 and because that changed, the *Dozier* individual was given
3 credit back to the date of the enactment. So I think that
4 case is on point. I do respect the Court's decision and we
5 will evaluate our options based on that, but I did want to
6 bring those to -- in the format of a motion to reconsider so
7 the Court could consider those in their discretion -- your
8 discretion.

9 THE COURT: All right. I perused this while we were
10 waiting on the other prisoners in and out.

11 Ms. Udogwu, do y'all want to be heard? Mr. Rutherford?

12 MR. RUTHERFORD: Your Honor, I think it's black-letter
13 law and even going back to when we changed the Life Without
14 Parole Statute, Your Honor remembers, you were practicing as
15 a prosecutor back then, you had the people that were
16 sentenced under the old one and the people sentenced on the
17 new one. We've done this for time evermore and I don't know
18 what this is about, but again, he served the time. The
19 legislature changed the law after he was already in jail and
20 certainly he is entitled to that time.

21 THE COURT: I think we made a record and your facts
22 delineate the event, arrest, law change and that was the
23 basis of my ruling is the law change came subsequent to
24 either the event or the arrest, therefore, he would have no
25 notice to -- of any subsequent offense while out on bond

1 he'd receive no credit. So I'm going to consistently rule
2 with my prior ruling that I believe that to be the law. He
3 gets the benefit of the better reading of that, not the
4 detriment of the incongruence reading of had he committed
5 the crime two months later, it'd be a harshly different
6 result, but he gets the benefit of the result that he got.
7 So, respectfully, your motion to reconsider's denied, but
8 you've made your record.

9 MR. PORTER: Thank you, Your Honor.

10 THE COURT: Excellent.

11 (END OF REQUESTED TRANSCRIPT)
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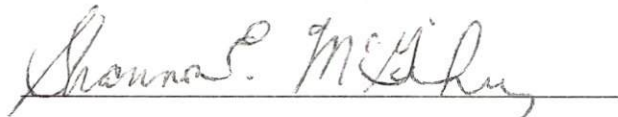
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CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) C E R T I F I C A T E
COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the General Sessions Court for York County, South Carolina, on the 14th and 16th days of September, 2026.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 21st day of October, 2026.



Shannon E. McGilberry, CVR-M

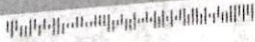
My Commission Expires:

April 26, 2027

ANGIE M. BRYANT
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KEVIN S. BRACKETT
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SIXTEENTH JUDICIAL CIRCUIT
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SC Court of Appeals

Hon. Jenny Abbott Kitchings, Clerk of Court
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