

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

DoANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

Unpublished Opinion No. 2012-UP-503

Filed 5 September 2012

ISIAH JAMES, JR.,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES (SCDPPPS),

Respondent.

APPENDIX

Isiah James, Jr., 96883
RGI, CA-52, P. O. BOX 2039
Ridgeland, S. C. 29936

INDEX TO APPENDIX

Record on Appeal	1-42
Brief of Appellant	43-52
Brief of Respondent	53-63
Decision of Court of Appeal of 9-5-12	64-70
Petition for Rehearing	73-77
Order Denying Petition for Rehearing	78

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

Docket No. 2005CP4002795

ISIAH JAMES, JR.,

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES (SCDPPPS),

RESPONDENT.

RECORD ON APPEAL

Isiah James, Jr., 96883

RCI, CA-52, P. O. Box 2039
Ridgeland, S. C. 29936

I N D E X

Indictment no. 79GS43-139 of March 1979 term	.....	1-2
6-1-1979 'Motions' transcript excerpts	...	3-8
Indictment no. 79GS43-141 of March 1979 term	....	9-10
4-13-1981 transcript excerpt(s)	.....	11-15
3-21-2001 'Notice of Rejection' from SCBPPPS	.....	16
5-3-2001 letter from respondent's attorney	....	17
4-15-2003 letter from clerk of ALC	.....	18
5-28-2003 letter from respondent's attorney	...	19
5-19-2005 'Order' from ALC	...	20-24
6-7-2005 'Notice of Appeal to circuit court	..	25-26
8-8-2005 'Request for Hearing'	....	27
8-14-2006 'Certification' from clerk of ALC	...	28
8-17-2006 letter from respondent's attorney	...	29
8-23-2006 'Order' from South Carolina Court of Appeals	...	30
10-3-2006 'Order' from South Carolina Court of Appeals	...	31
7-8-2008 letter from clerk of South Carolina Court of Appeals	...	32
4-8-2011 'Motion to Dismiss' of respondent	....	33-36
Commitment Application Conviction Summary	....	37
8-31-2011 'Form 4' judgment	..	38
9-26-2011 Order of the circuit court	...	39-41
Certificate of appellant	....	42
Certificate of Service	....	42

The State of South Carolina

INDICTMENT FOR MURDER

County of SUMTER

At a Court of General Sessions, convened on the 19th day of March 19 79, the Grand Jurors of Sumter County present upon their oath:

That one MAURICE MACK and one ISIAH JAMES, JR.

did with malice aforethought in Sumter County on or about the 25th day of October, 19 78, kill one Norman Guest Reames by means of shooting

and that the said Norman Guest Reames

did die in Sumter County as a proximate result thereof on or about the 25th day of October, 19 78.

Against the peace and dignity of the State.

R. Kirk McLeod

R. Kirk McLeod Solicitor

Witnesses

- Sheriff I. Byrd Parnell
- Ted Owens, SLED
- J. L. Bonds, SLED
- Tom Henderson, SLED
- Carlton Medley, SLED
- I. B. Parnell, Jr., SLED
- T. R. Wims, John Johnson
- W. L. Poulas, R. M. Jones
- Jerry Hvalic, R. J. Folsey
- H. A. Mathis
- Dr. C. I. Beener, Shoney Hospital
- Dr. J. S. Sexton, Charleston Medical Univ
- Isaac McCallum, 2890 Jamie St
- Richard Ellis, 2145 Estate Drive

Verdict

Foreman

RUBEN GRAY & E. ATKINSON (J)
 JOHN HOAR (M)
 PUBLIC DEFENDER SAM HASKELL (M)
 The State of South Carolina
 County of SUMTER
 139

COURT OF GENERAL SESSIONS

MARCH Term, 19 79

THE STATE

VS.
 MAURICE MACK
 ISIAH JAMES, JR.

Arraigned 3/26/79

INDICTMENT FOR

MURDER

Foreman
Foreman of Grand Jury

McGAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

THE PRISONER MAURICE MACK IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED.

ATTEST:
[Signature] } Maurice Mack
 C. C. & G. S.

CERTIFIED TRUE COPY OF ORIGINAL FILED
[Signature]
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

ISIAH JAMES, JR IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY ~~MURDER~~ TO VOLUNTARY MANSLAUGHTER

ATTEST:
[Signature] } Isiah James Jr
 C. C. & G. S.

THE SENTENCE OF THE COURT IS THAT THE PRISONER Maurice Mack BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Life OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED

THE SENTENCE OF THE COURT IS THAT THE PRISONER Isiah James, Jr BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 years OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED

COUNTY FACILITIES, OR PAY A FINE OF \$
[Signature] JUN 18 1979
 PRESIDING JUDGE

13

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

7 STATE OF SOUTH CAROLINA,

9 vs.

TRANSCRIPT OF RECORD

10 MOTIONS: June 1, 1979

11 MAURICE MACK and
12 ISIAH JAMES, JR.,

Defendants.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Mary J. Fuller

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

17 BEFORE: Honorable Ernest A. Finney, Jr.
18 Resident Judge

19 June 1, 1979

21 APPEARANCES

22 For The State:

For The Defendants:

23 R. KIRK McLEOD, SOLICITOR
24 Third Judicial Circuit
25 HARRY B. BURCHSTEAD, JR.,
Assistant Solicitor
Sumter, South Carolina 29150

SAM HASKELL, ESQUIRE
PHILLIP NEWSOM, ESQUIRE
JOHN S. HOAR, ESQUIRE
RUBEN L. GRAY, ESQUIRE
Sumter, South Carolina 29150

SUMTER, S.C. 29150

92/57

The Defendants Maurice Mack and Isiah James were indicted, on Indictments Number 79GS43-139 and 79GS43-140, respectively, for two counts of murder as to each indictment.

The matter came on to be heard on June 1, 1979, on the disposition of motions filed in the Court of General Sessions for Sumter County before the Honorable Ernest A. Finney, Jr., Resident Judge, at Sumter, South Carolina.

The State of South Carolina was represented by R. Kirk McLeod, Solicitor for the Third Judicial Circuit, and Harry B. Burchstead, Jr., Assistant Solicitor, both of Sumter, South Carolina.

Present and appearing on behalf of the Defendant Maurice Mack were Sam Haskell, Esquire, Phillip Newsom, Esquire, and John S. Hoar, Esquire, all of the Sumter County Bar and Sumter, South Carolina.

Present and appearing on behalf of the Defendant Isiah James, Jr., was Ruben L. Gray, Esquire, of the Sumter County Bar and Sumter, South Carolina.

The following represents a true record of the proceedings.

SUMTER, S.C. 29150

1 to concentrate on this one case of murder.

2 BY THE COURT: Yes sir.

3 BY SOL. McLEOD: As the background of it, if
4 anything develops during the course of the trial, we are
5 going to pursue anything else; but at the present time we
6 are interested in disposing of these gentlemen here. The
7 next thing they'll want us to do is try something up in
8 Greenville or bring Sputnik back from Florida where he just
9 got electrocuted. We can't cover the whole world for them.
10 But these two gentlemen here are charged with murder, and
11 that's what we are here discussing. We are not discussing---

12 BY THE COURT: All right, sir---

13 BY SOL. McLEOD: ---The drug traffic, he was involved
14 in drugs before; we'll admit that he was indicted for it
15 prior to this.

16 BY ATTY. NEWSOM: Your Honor, our position would be
17 that we are entitled to the results of the investigation,
18 any negotiations. We submit that the State will need the
19 testimony of one or both of those individuals in the
20 Cusumano family in their efforts to prove beyond a
21 reasonable doubt the elements of the crime of armed robbery
22 that they have submitted as their aggravating circumstances.

23 BY THE COURT: All right, sir, fine. I'm not going
24 to rule on whether or not at this point the investigation
25 would be pertinent or germane to the inquiry because I think

5

5

SUMMER, S.C. 1910

1 . BY SOL. McLEOD: I might point out, Judge, that the list
2 that he is talking about, the information for his defense
3 in the armed robbery case, the case has been called and
4 will be called as murder.

5 BY THE COURT: Yes sir, I understand that; but I
6 gather he is talking about one of the---

7 BY SOL. McLEOD: Of course, that's a back-up case---

8 BY ATTY. NEWSOM: Your Honor, I think Brady---

9 BY THE COURT: That's all right, let me go through
10 these.

11 BY ATTY. NEWSOM: Yes sir.

12 BY THE COURT: Number 3, all written statements of
13 the accused, whether signed or unsigned; any objection,
14 Solicitor?

15 BY SOL. McLEOD: They have them, sir, do they?

16 BY ATTY. NEWSOM: We already have them, Your Honor.

17 BY THE COURT: All right, sir, that's granted.
18 Number 4, all written statements made by witnesses or any
19 other persons, whether signed or unsigned, which relates
20 to this case. Do you've got any---

21 BY SOL. McLEOD: So far as I know, they have
22 everything that they have asked for.

23 BY THE COURT: All right, sir. That one would be
24 granted with the exception of if there are people within
25 the State's file that they consider to be confidential,

1 on that and I'll think about it for a while. Do you wish to
2 be heard on that one, Solicitor? Criminal records of any
3 witnesses...

4 BY SOL. McLEOD: I don't see where it's got anything
5 to do with the prosecution or the defense of this case
6 because like I started off before, the only thing we are
7 concerned with is trying these two people for murder.

8 BY THE COURT: All right, sir, fine thank you.

9 BY ATTY. NEWSOM: Your Honor, I'd like to make one
10 other point at this time if I could?

11 BY THE COURT: Yes sir?

12 BY ATTY. NEWSOM: Our request for this information
13 does not necessarily only go as to the guilt or innocence
14 phase. We feel that we are entitled to, I think through
15 Brady, to any information of the same nature and all of
16 these other previous requests that go to the sentencing
17 phase---

18 BY THE COURT: The sentencing phase---

19 BY ATTY. NEWSOM: ---And that would be to the charge
20 of the aggravating circumstance of armed robbery.

21 BY THE COURT: All right, sir, fine thank you. I
22 think that takes care of your Brady motion. Now, Mr.--that
23 takes care of all of your motions, doesn't it?

24 BY ATTY. NEWSOM: Yes, Your Honor, it is a continuing
25 motion. Is that my understanding, that the motion is

SUMTER, S.C. 29130

100

7

1 on that and I'll think about it for a while. Do you wish to
2 be heard on that one, Solicitor? Criminal records of any
3 witnesses...

4 BY SOL. McLEOD: I don't see where it's got anything
5 to do with the prosecution or the defense of this case
6 because like I started off before, the only thing we are
7 concerned with is trying these two people for murder.

8 BY THE COURT: All right, sir, fine thank you.

9 BY ATTY. NEWSOM: Your Honor, I'd like to make one
10 other point at this time if I could?

11 BY THE COURT: Yes sir?

12 BY ATTY. NEWSOM: Our request for this information
13 does not necessarily only go as to the guilt or innocence
14 phase. We feel that we are entitled to, I think through
15 Brady, to any information of the same nature and all of
16 these other previous requests that go to the sentencing
17 phase---

18 BY THE COURT: The sentencing phase---

19 BY ATTY. NEWSOM: ---And that would be to the charge
20 of the aggravating circumstance of armed robbery.

21 BY THE COURT: All right, sir, fine thank you. I
22 think that takes care of your Brady motion. Now, Mr.--that
23 takes care of all of your motions, doesn't it?

24 BY ATTY. NEWSOM: Yes, Your Honor, it is a continuing
25 motion. Is that my understanding, that the motion is

SUMTER, S. C. 20190

611

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned Daisy M. Moore, official court reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings in the within captioned case which were held in the Court of General Sessions for Sumter County on June 1, 1979, before the Honorable Ernest A. Finney, Jr. Resident Judge, at Sumter, South Carolina.

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

Daisy M Moore

December 28, 1983

SUMTER, S.C. 29150



The State of South Carolina

INDICTMENT FOR ARMED ROBBERY,
~~ROBBERY AND OBSTRUCTION OF JUSTICE~~

County of SUMTER

At a Court of General Sessions, convened on the 19th day of March
19 79, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE—ARMED ROBBERY

That one MAURICE MACK and one ISIAH JAMES, JR.

did in Sumter County on or about the 25th day of October

19 78, while armed with a deadly weapon, to wit: .38 calibre pistol

feloniously take from the person in the presence of Gary Cusamano and Norman Guest Reames

by means of force or intimidation goods or monies of the said Gary Cusamano and Norman Guest Reames
such goods or monies being described: a quantity of Marijuana

COUNT TWO—ROBBERY

That _____

did in _____ County, on or about the _____ day of _____

19____, feloniously take from the person or presence of _____

by means of force or intimidation goods or monies of the said _____

such goods or monies being described: _____

COUNT THREE—LARCENY

That _____

did in _____ County on or about the _____ day of _____

19____, feloniously take and carry away the goods and monies of _____

of a value of _____

described: _____

with intent to deprive the owner permanently of such goods and monies.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

R. Kirk McLeod

R. Kirk McLeod Solicitor

9

County of SUMNER

COURT OF GENERAL SESSIONS

MARCH Term, 19 79

THE STATE

VS.

MAURICE MACK

ISIAH JAMES, JR.

*With Plea as to Maurice
Mack Pled guilty to Murder
1st Degree*

INDICTMENT FOR

Armed Robbery.

Robbery and Armed Robbery

TRAINED BILL

[Signature]

Foreman of Grand Jury

LOCAL PRINTERS, 210 DEVINE ST., COLUMBIA, S. C. 29201

Witnesses

Shelley J. Boyd Parnell

L. Ted Owens, SLED

J.L. Bonds, SLED

Tom Henderson, SLED

Carlton Medley, SLED

Ira B. Parnell, Jr., SLED

H.A. Mathis

T.R. Vims

W.L. Poulos

J.A. Byatt

R.J. Foisey

R.M. Jones

Verdict

THE PRISONER ISIAH JAMES, JR IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED.

ATTEST:
[Signature]
C. C. P. & G. S.

THE SENTENCE OF THE COURT IS THAT THE PRISONER Isiah James, Jr BE HELD TO HARD LABOR IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 25 years OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF \$ —

[Signature]
PRESIDING JUDGE

DEPUTY CLERK OF COURT
SUMNER COUNTY
SOUTH CAROLINA
[Signature]

JUN 18 1979 *Consecutive to Indictment # 140 and 139*

1 have been weak, extremely weak.

2 Q Did you at one time prepare a motion for severance
3 before Judge Finney?

4 A Yes, I'm sure I did.

5 Q And that motion was ultimately denied?

6 A Yes.

7 Q All right, did you explain to the applicant that that
8 meant that he would have to go to trial with the co-defen-
9 dant?

10 A Yes.

11 Q Mr. Gray, do you have an opinion as to whether or not
12 the applicant understood what he was doing before he pled
13 guilty?

14 A I am of the opinion that the applicant was under
15 considerable pressure, the pressure of the case, the
16 pressure of uncertainty, as a criminal defendant might
17 be with such charges. I am impressed and very hopeful that
18 he understood. I am impressed that he was.

19 Q And after the plea was entered and the sentence im-
20 posed, did you have any discussions with Mr. James con-
21 cerning the possibility of appeal?

22 A I'm sure we talked after the sentence. I'm not going
23 to say whether we discussed an appeal or not. I don't
24 remember. I really don't.

25 Q In your opinion was there anything to appeal from?

PENGAD CO., DAYTON, N.J. 07002 - FORM 1004

EXHIBIT: A

74
14

1 MR, MOORE: We'd also move at this time to have ad-
2 mitted as part of the record as Respondent's exhibit 3,
3 the certified court records.

4 THE COURT: Any objection to that, Mr. James?

5 MR, JAMES: No. No objection.

6 THE COURT: Thank you, Sir.

7 (Court Records were marked State exhibit number 3,)

8 THE COURT: Anything further from this witness, Mr.
9 Moore?

10 MR, MOORE: No, Sir. I have nothing further.

11 THE COURT; Mr, James, you may cross examine.

12 CROSS EXAMINATION by Mr, James:

13 Q Mr, Atkinson?

14 A Yes, Sir,

15 Q Did you or did you not came to see applicant?

16 A Yes, I did,

17 Q The week end before the plea was entered with Mr,
18 Gray and Mrs. James with an attempt for applicant to waive
19 the Sixth Amendment right to trial by jury?

20 A Did you say did I come with Mr, Gray and with your
21 mother for the purpose of talking you into waiving your
22 right to trial by jury?

23 Q Yes,

24 A We came, Mr, Gray and I, with your mother, as I
25 recollect, we came with the idea, Mr. James, of explaining

2

PERGAD CO., DAYTON, N.J. 07602 • FORM 2004

13

1 to you the dilemma that you were in on one hand and the
2 relief which you might, which would be a certainty of not
3 going to the electric chair if you elected to plead guilty.

4 Q Was you or was you not at applicant's motion for
5 severance?

6 A No, I was not there. As I remember at that time, I
7 believe, if I'm not mistaken, that I was not present at
8 the time the motion was made by Mr. Gray before Judge
9 Finney for a severance.

10 Q So you do or do not know what went on at that motion?

11 A No, I naturally couldn't know about it if I wasn't there.

12 Q You didn't review the record?

13 A Not with regard to that motion.

14 Q Do you think that that motion played a great part in
15 the entering of a guilty plea?

16 A I don't know what weight that it had with you, Mr.
17 James, with regard to the entry of the guilty plea. It
18 may have had--as I say, I don't know what was in your
19 mind but with regard to it, whether we had a separated
20 trial or tried together, if the motion were denied and
21 you were tried together, I cannot in any fashion at all
22 change my opinion of the fact that I think as for you a
23 guilty plea with a reduction of sentence was the proper
24 thing to do.

25 Q Was it or was it not your responsibility to check...

PENGAD CO., DAYTON, N.J. 07008 - FORM 8094

16/16

CERTIFICATE

1
2 I, the undersigned Ruth F. Hill, official Court
3 Reporter for the Third Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is
5 a true, accurate and complete Transcript of Record of all
6 the proceedings had and evidence introduced in the trial
7 of the captioned cause in the Court of General Sessions
8 for Sumter County, South Carolina, on the 13th day of April,
9 1981.,

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

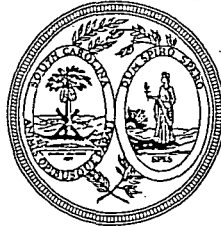
12
13 Ruth F. Hill
14

15 Manning, S. C.

16 June 19th, 1981
17
18
19
20
21
22
23
24
25

State of South Carolina
Department of Probation, Parole and Pardon Services

JIM HODGES
Governor



STEPHEN K. BENJAMIN
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

March 21, 2001

Mr. Isiah - James, jr. #00096883
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936

Re: NOTICE OF REJECTION

Dear Mr. James, jr.:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

2

State of South Carolina
Department of Probation, Parole and Pardon Services

JIM HODGES
Governor



STEPHEN K. BENJAMIN
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

May 3, 2001

Mr. Isiah James, Jr., #96883
Ridgeland Correctional Institution, SA-57
Post Office Box 2039
Ridgeland, South Carolina 29936

Dear Mr. James:

The Department of Probation, Parole and Pardon Services (the DPPPS) is in receipt of a document dated April 25, 2001 and captioned as a "Brief of Appellant" in which you claim you are pursuing an "appeal" from the Board of Probation, Parole and Pardon Services' (the Board's) decision to deny parole.

It appears you have attempted to file your "brief" with the Clerk of Court for the Administrative Law Judge Division (ALJD) according to the procedures set forth in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Pursuant to the findings in the "Order of Dismissal" in Furtick v. South Carolina Department of Probation, Parole and Pardon Services (00-ALJ-04-00322-AP) (copy attached), the DPPPS understands that the ALJD does not have jurisdiction to hear appeals from final decisions of the DPPPS. Therefore, unless instructed to do so by the Clerk of Court for the ALJD, no further action will be taken by the DPPPS in this matter.

If you have any questions or concerns, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Benjamin Aplin".

J. Benjamin Aplin
Legal Counsel

JBA:lhs

cc: The Honorable H. Lee Smith, Clerk of Court for the ALJD

17

Administrative Law Judge Division

4
Marvin F. Kitrell
Chief Judge

H. Lee Smith
Clerk

(803) 734-0550
FAX (803) 734-6400

Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Post Office Box 11667
Columbia, South Carolina 29211

Memorandum

To: Isiah James, Jr. #96883
From: Clerk's Office
Date: April 15, 2003

Your Appeal is being returned with the following information:

- Attached is a copy of the Notice of Appeal form you must use to file an appeal from a final decision of the South Carolina Department of Probation, Parole and Pardon Services.
- Attached is a copy of the Rules of Procedure for the Administrative Law Judge Division in matters on appeal pursuant to Al-Shabazz v. State and Furtick v. State.
- Furtick vs. State, held that an inmate may file an appeal with the Division from final decisions of the Department of Probation, Parole and Pardon Services **regarding the permanent denial of parole eligibility**. If you wish to proceed with an appeal then you must receive a written final decision from the appropriate official at PPPS. Attached to the decision will be a form Notice of Appeal with instructions on how to file the appeal with the Division. This form must be used before your case will be filed and processed with the Administrative Law Judge Division.

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



JIM McCLAIN
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

May 28, 2003

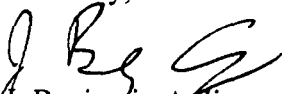
Isiah James, Jr., #096883
RCI, GB-63
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. James:

I am in receipt of your Petition for Writ of Mandamus Alternative Habeas Corpus which you have filed in the original jurisdiction of the South Carolina Supreme Court.

It appears you are now attempting to appeal the Department's May 4, 2001, determination that you are to be heard every two years following a parole rejection. Now that such an appeal is cognizable under Furtick v. South Carolina Department of Probation, Parole and Pardon Services, Op. No. 25581 (S.C. Sup. Ct. decided January 13, 2003, rehearing denied February 20, 2003), you have the right to appeal this final decision by seeking review by an Administrative Law Judge. In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Judge Division (ALJD). You will also be required to comply with the ALJD Rules of Procedure for special appeals. Failure to follow the ALJD instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,


J. Benjamin Aplin
Legal Counsel

JBA:dn

19



8

7
Manslaughter in both indictments, and was sentenced on June 18, 1979 to 30 years imprisonment on each charge, both running consecutive. Also at the March, 1979 term of the Sumter County grand jury, Appellant was indicted for Armed Robbery for an offense committed on October 25, 1978. He pled guilty to this charge, and was sentenced on June 18, 1979 to a term of 25 years imprisonment, running consecutive to the two 30 year terms on the voluntary manslaughter charges. Appellant now challenges the Board's decision not to grant him parole at his most recent hearing and also challenges the Department's determination that he is eligible for parole hearings on a biannual rather than an annual basis.

DISCUSSION

Claims Regarding Board's Decision Not to Grant Parole

It is fundamental that "every court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination." Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 8, 132 S.E.2d 18, 21 (1962). Accordingly, the "lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." Lake v. Reeder Const. Co., 330 S.C. 424, 428, 498 S.E.2d 650, 653 (Ct. App. 1998).

The Court's jurisdiction to hear appeals from decisions of the Department is derived from two recent decisions of the South Carolina Supreme Court, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole, and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of final decisions of the Department of Corrections in "non-collateral" matters, *i.e.*, matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the Court and ultimately to the circuit court pursuant to the Administrative Procedures Act. 338 S.C. at 373, 376, 527 S.E.2d at 752, 754. In Furtick, the Supreme Court addressed an inmate's appeal from a determination by the Department of Probation, Parole and Pardon Services that he was statutorily ineligible for parole as a violent offender under S.C. Code Ann. § 24-1-640. The Court held that, in order to determine whether an inmate's claim against the Department is entitled to review by the Court under the procedures set forth in Al-Shabazz, it is first necessary to determine whether the inmate has a "liberty interest in gaining access

to the parole board.” 352 S.C. at 598, 576 S.E.2d at 149. The Court further determined that the “*permanent denial of parole eligibility*” by the Department “implicates a liberty interest sufficient to require at least minimal due process.” *Id.* (emphasis in original). Therefore, the Court extended the right to appellate review by the Court under Al-Shabazz to encompass claims against the Department involving the permanent denial of parole eligibility. The Supreme Court noted, however, that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in parole itself: “Although [section 24-21-620] creates a liberty interest in parole eligibility, it does not create a liberty interest in parole.” Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4 (emphasis added). Since no liberty interest is implicated when a potentially eligible inmate is denied parole by the Board, an inmate has no right to appeal the denial of parole to the Court under Furtick, but instead must await his or her next parole hearing. *See id.* (“Section 24-21-620 also provides the procedure to follow when the Board determines not to grant parole for a *potentially eligible* inmate: ‘[u]pon a negative determination, the prisoner’s case shall be reviewed every twelve months thereafter for the purpose of such determination.’”) (Emphasis in original). The Supreme Court further explained the nature of the Court’s jurisdiction in Sullivan v. S.C. Dept. of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003):

In simple terms, this [the holding in Furtick] means that an inmate has a right of review by the [Administrative Law Court] after a *final* decision that he is *ineligible* for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole; the parole board is, however, required to review an inmate’s case every twelve months after a negative parole determination. S.C. Code Ann. § 24-21-620 (Supp. 2002). This distinction stems from the fact that parole is a privilege, not a right.

Sullivan at n. 4 (emphasis in original).

In this case, insofar as Appellant is arguing that the Parole Board’s decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not involve a determination by the Department that he is permanently ineligible for parole and is therefore not appealable to the Court under Furtick and Sullivan.

P.3, P.5

22

Frequency of Parole Hearings

Appellant further contends that the Department improperly determined that he was eligible for parole hearings on a biannual rather than an annual basis, in violation of Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). The gist of Appellant's claim is that the Department's action constitutes an *ex post facto* violation.

An *ex post facto* violation occurs when a change in the law *retroactively alters the definition* of a crime or *increases the punishment* for a crime. Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997); California Dep't of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995); Farris v. State, 334 S.C. 21, 511 S.E.2d 688 (1999). The law existing *at the time of the offense* determines whether an increase of punishment constitutes an *ex post facto* violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). In Jernigan v. State, the South Carolina Supreme Court held that the retroactive application of S.C. Code Ann. § 24-21-645, which was enacted in 1986 and which changed parole review for violent offenders from annual to biannual, violates the *ex post facto* clause.

The Appellant argues that the Department is retroactively applying Section 24-21-645 to him, because at the time he committed the offenses for which he is incarcerated, that section had not been enacted. At the time of Appellant's crimes in 1978, there was no statute which governed the frequency of parole hearings. Instead, the frequency of parole hearings was a matter committed to the discretion of the Board. According to the Board's procedure manual in effect at the time of Appellant's offense, the relevant portion of which is attached to the Department's brief as Exhibit 1, the Board's policy concerning parole review after an initial denial of parole was to conduct another review every twenty-four months in the case of prisoners who were serving sentences of 30 years or more. Therefore, there is no *ex post facto* violation because the Department is properly applying the law in effect at the time of Appellant's crimes, rather than retroactively applying Section 24-21-645, in determining that Appellant is eligible for parole every two years. Moreover, the amendments to S.C. Code Ann. § 24-21-620, which first provided annual parole review for parole eligible inmates, were not enacted until 1981, several years after Appellant's crimes were committed. See 1981 Act No. 100, § 10. Thus, this case may be distinguished from Jernigan, in which the inmate committed armed robbery after the enactment of Act 100 of 1981 and was entitled to annual parole review at the

10

17

time of his offense. I therefore find that the Department's decision that Appellant is entitled to biannual rather than annual parole hearings must be affirmed.

ORDER

IT IS THEREFORE ORDERED that Appellant's claims regarding the Board's decision not to grant him parole at his parole hearings are dismissed.

IT IS FURTHER ORDERED that the Department's decision to grant Appellant parole hearings every two years is affirmed.

AND IT IS SO ORDERED.

Ralph King Anderson III
Ralph King Anderson, III
Administrative Law Judge

Columbia, South Carolina
May 19, 2005

5

CERTIFICATE OF SERVICE
This is to certify that the enclosed copy of this order was served by first class mail upon all parties to this case by depositing a copy hereof in the United States Mail, postage prepaid, in the following manner: (attach to the parties) (or their attorneys).

This 19th day of May, 2005
By *Elizabeth L. Boyer*
Judicial Law Clerk

24

2005 CP 4 002795

June 7, 2005

The Honorable Barbara A. Scott
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202-2766

RECEIVED
C.C.C. &
JIT

2005 JUN 13 AM 11:24

Re: Isiah James, Jr., v. South Carolina Department of Pro-
bation, Parole and Pardon Services, Docket No. 03-ALJ-
15-00032-AP (Appeal From Administrative Law Court)

Dear Ms. Scott:

The undersigned has enclosed a Notice of Appeal for processing with your office; he has annexed hereto a copy of the "ORDER" which he is appeal therefrom. If you could please provide him with case number for this appeal in the near future - there are some pleadings that he desires to file with the Court for consideration.

Respectfully requested,

/s/

Isiah James, Jr.

Isiah James, Jr. 96883
RCI, GB-41
P. O. Box 2039
Ridgeland, S. C. 29936

cc: The Honorable Jana Shealy
Clerk, Administrative Law Judge Division
Post Office Box 11667
Columbia, S. C. 29211

Lovee McKinney Watts, Esq.
Post Office Box 50666
Columbia, S. C. 29250

The undersigned hereby certifies that he has caused true and correct copies of the "NOTICE OF APPEAL" to be mailed, postage prepaid, to the Clerk's Office of the Administrative Law Judge Division and respondent's attorney as they are identified above herein this 7 day of June 2005.

/s/ *Isiah James, Jr.*

12

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Isiah James, Jr.,)
 Appellant,)
 -versus-)
 South Carolina Department)
 of Probation, Parole and)
 Pardon Services,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

NOTICE OF APPEAL

Appeal From Administrative Law Court
 Ralph King Andersen, III, Judge

Docket No. 03-ALJ-15-00032-AP

2005 JUN 13 AM 11:22
 BARBARA G. JONES
 C.C.C. CLERK

Isiah James, Jr., appeals the "ORDER" of the Honorable
 Ralph King Andersen, III, dated May 19, 2005. Appellant re-
 ceived written notice of the "ORDER" which is identified by
 number set forth above herein on 23 May 2005.

June 7, 2005

/s/ Isiah James, Jr.

Isiah James, Jr., 96883
 RCI, GE-41
 P. O. Box 2039
 Ridgeland, S. C. 29936

Other Counsel of Record:
 Lovee McKinney Watts
 Legal Counsel
 221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, S. C. 29250

26

13

05-2795

RICHLAND COUNTY
FILED

BARBARA A. SCOTT
C. & G.S.

2005 SEP 12 AM 11:04

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2005CE002795

ISIAH JAMES, JR.,)
Appellant,)

REQUEST FOR HEARING

-versus-

SOUTH CAROLINA DEPARTMENT)
OF PROBATION, PAROLE AND)
PARDON SERVICES (SCDPPPS),)
Respondent.)

Judgment Roll No. _____

Attorney for Appellant: Pro se
Office address: (RCI, GB-49, P. O. Box 2039
Ridgeland, S. C. 29936

Telephone: _____ Fax _____
Attorney for Respondent: Lovee McKinney Watts, Esq
Office address: Post Office Box 50666
2221 Devine Street, Suite 600
Columbia, S. C. 29250

Telephone: (803) 734-9220 Fax: 734-9440

Type of Case: Appeal from Administrative Law Court

Time Needed: 15 minute(s)

Date and time unavailable: Na

Comments and issues: Appellant has submitted a brief which
will be the key or fine point of his argument of legal
error by lower court.

Hearing Requested by: Isiah James, Jr.
For Appellant Respondent
Date: _____

8-8-05

27/10

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RSS

14

05-2795

Isiah James, Jr. #96883)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
)
)

STATEMENT OF THE CONTENTS
OF THE RECORD
AND
CERTIFICATION

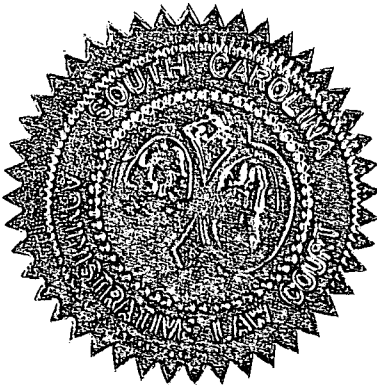
DOCKET NO. 03-ALJ-15-00032-LAP

RIGHLAND COUNTY
 FILED
 2006 AUG 14 AM 8:31
 BARBARA A. SCOTT
 C.C.C. & G.S.

The following documents, pleadings, and other materials are certified as the contents of the record before the Court, copies of which are attached hereto:

1. Notice of Appeal filed August 26, 2003.
2. Notice of Assignment filed September 4, 2003.
3. Brief of Appellant filed September 23, 2003.
4. Respondent's Record on Appeal filed October 14, 2003.
5. Respondent's Original Brief filed November 20, 2003.
6. Order issued by SCALC filed May 19, 2005.

I hereby certify the attached to be a true copy of this matter as set forth above, the original of which is filed in this office in conformance with Chapter 23, Article 5, Title I of the South Carolina Code of Laws, 1976.



In witness whereof, I have signed this Statement of the Contents of the Record and Certification and affixed my official seal at Columbia, SC this 14th day of August, 2006.

Chief Administrative Law Judge

Cathy Dean

By: Clerk of the Court

for Jana Shealy

By my signature below, I acknowledge receipt of the Certification and the Contents of the Record as set forth above. This the _____ day of _____, 2006.

Clerk of Court

28
72

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

August 17, 2006

The Honorable Kenneth Richstad
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE: Isiah James v. SCDPPPS
Docket No.: 05-ALJ-15-00012-AP

Dear Mr. Richstad:

I am in receipt of Mr. James' "Notice of Appeal" and his "Petition to Proceed in Forma Pauperis", both of which were sent to your office on August 12, 2006. By way of these documents it appears that Mr. James is attempting to consolidate two Administrative Law Court matters, (03-ALJ-15-0003-AP) and (05-ALJ-15-00012-AP), and asking this court to accept appellate jurisdiction despite the fact that the Circuit Court has yet to rule on either matter. Because this appeal is premature, the Department is asking that it and all of Mr. James' motions be dismissed.

Thank you for your consideration in this matter.

Sincerely,


J. Benjamin Aplin
Assistant Chief Legal Counsel

JBA:dn

cc: Isiah James, #96883

16

The South Carolina Court of Appeals

Isiah James, Jr. #096883, Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

The Honorable Ralph K. Anderson, III
Unknown County
Trial Court Case No. 2005-AL-15-00012

ORDER

The appellant has filed a document seeking to transfer to this Court a matter pending in the Circuit Court. This Court acts only pursuant to Notices of Appeal. DISMISSED.

IT IS SO ORDERED.

 A. J.

Columbia, South Carolina

8/23/2006

cc: Isiah James, Jr. #096883
John Benjamin Aplin, Esquire

FILED

8/30/06 *dlp*

30
14

17

The South Carolina Court of Appeals

Isiah James, Jr. #096883,

Appellant,

v.

South Carolina Department of
Probation, Parole and Pardon Services,

Respondent.

The Honorable Ralph K. Anderson, III
Unknown County
Trial Court Case No. 2005-AL-15-00012

ORDER

The appeal in 2005-AIJ-15-00012 is reinstated. No appeal is pending in the Court of Appeals in 2003-ALJ-00032. The motion to proceed in forma pauperis will be taken under consideration.

Timelines to perfect the appeal are not held in abeyance.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY *Wendy S. Smith*
CLERK

Columbia, South Carolina

10/3/2006
cc: Isiah James, Jr. #096883
John Benjamin Aplin, Esquire

FILED 3/
10/3/06 *dlg*
15



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 8, 2008

Mr. Isiah James #96883
Ridgeland Correctional Inst.
P.O. Box 2039
Ridgeland, SC 29936

Dear Mr. James:

The enclosed document was sent to this Court by the Richland County Clerk of Court.

However, we have no appeal pending here in this case.

Therefore, we are returning the document to you.

Sincerely,

Handwritten signature of Kenneth A. Richstad in cursive.
Kenneth A. Richstad
Clerk of Court

rj

B2

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No. 2005-CP-40-02795

Isiah James, Jr. SCDC# 96883,)

Plaintiff,)

v.)

South Carolina Department of Probation,)
Parole and Pardon Services,)

Respondent.)

MOTION TO DISMISS

The Respondent, the South Carolina Department of Probation, Parole and Pardon Services, through their attorney, Mr. Tommy Evans, Jr., presents this motion to dismiss the Plaintiff's appeal pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

STATEMENT OF THE CASE

On October 25, 1978, the Plaintiff along with his co-defendant Maurice Mack robbed Mr. Gary Cusamano, and Mr. Norman Guest Reames with a pistol taking a quantity of marijuana. Both victims were then shot and killed. The Plaintiff was later arrested and charged with two counts of murder and armed robbery, he was later indicted by the Sumter County Grand Jury for each offense. On June 18, 1979, the Plaintiff appeared before the Honorable Dan F. Laney and pled to two counts of voluntary manslaughter and one count of armed robbery. The Plaintiff was sentenced to a thirty (30) year period of incarceration for each count of voluntary manslaughter to be served consecutively, and twenty-five (25) years imprisonment for armed robbery, also to be served consecutively, a total sentence of eighty-five (85) years. Pursuant to South Carolina law

33

the Plaintiff became eligible for parole upon the service of ten (10) years. On February 17, 1988, the Plaintiff appeared before the Parole Board and was denied parole. Since that initial denial the Plaintiff has appeared before the Board eight additional times each resulting in the denial of parole. On March 4, 2009, the Plaintiff was once again eligible to appear before the board, prior to this hearing he waived his opportunity to appear.¹

On March 5, 2003, the Appellant filed a notice of appeal before the Administrative Law Court (ALC) arguing that it is unconstitutional for him to be allowed to appear before the court bi-annually. On May 19, 2005, the Honorable Ralph King Anderson, III ruled that due to Department policy existing at the time he committed the offense, no violation of ex post facto exist. Upon receiving this decision the Appellant filed a notice of appeal before the South Carolina Court of Appeals. The Court of Appeals decided to affirm the decision of the ALC. James v. South Carolina Department of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008).

Wrong
Case

After this decision the Appellant filed another appeal before the ALC on May 17, 2005. Within this appeal, the Appellant argued that only having five (5) Board members present violated his due process rights. On May 16, 2006, Judge Anderson once again ruled that a quorum was present so the Plaintiff was not denied due process. Notice of appeal was once again filed before the South Carolina court of appeals; they again decided to affirm the decision of the ALC. James v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 564, 660 S.E.2d 288 (2008).

Wrong
Date

The Appellant then filed a petition for writ of habeas corpus before the United States

¹Plaintiff is scheduled to appear before the board on April 13, 2011.

34

17

District Court. Within this petition the Appellant again argued that his being heard by only five members of the Parole Board was a violation of due process; and, being allowed to appear bi-annually is a violation of ex post facto. On August 4, 2010, the Honorable Shiva V. Hodges, United States Magistrate submitted a report and recommendation, which she recommended the District Court grant the Respondent's motion for summary judgment. On October 12, 2010, the Honorable Terry L. Wooten, United States District Court Judge decided to accept the recommendations of Judge Hodges, and granted the Respondent's motion for summary judgment. Since this decision the Appellant has filed a notice of appeal before the 4th Circuit United States Court of Appeals, which remains pending.

The Appellant again seeks a reversal of the decision of the ALC. It is the position of the

*Wrong
state
court*

Appellant that the Circuit Court does not have subject matter jurisdiction over a decision of the ALC; therefore, the Plaintiff's appeal should be subject to dismissal.

ARGUMENT

1. The Circuit Court does not have subject matter jurisdiction over a decision of the Administrative Law Court.

The Appellant files a notice of appeal in the Court of Common Pleas regarding a decision made by the Administrative Law Court. The Respondent argues that the Circuit Court does not have jurisdiction regarding matters heard before the Administrative Law Court. Any review of the decision of the ALC must be made by the Court of Appeals. The Court of Appeals has jurisdiction over any case in which an appeal is taken from an order, judgment or decree of the circuit court, family court, a final decision of an agency, a final decision of an Administrative Law Judge, or the final decision of the Workers Compensation Commission. S.C. Code Ann.

§14-8-200. For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellant Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. S.C. Code Ann. §1-23-610. It is the argument of the Respondent that a notice of appeal from a decision of the ALC must be made to the Court of Appeals and not the Circuit Court, so this court does not have subject matter jurisdiction. Since this matter goes beyond the jurisdiction of the Circuit Court it must be dismissed.

CONCLUSION

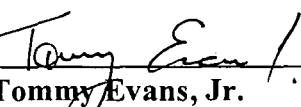
The filing of an additional appeal before the circuit court is null and void and cannot be decided due to the lack of jurisdiction that exist within this court. Therefore, due to this defense the Respondent would respectfully request this Honorable Court dismiss this Appeal.

Respectfully submitted,

Teresa A. Knox
Deputy Director for Legal Services

J. Benjamin Aplin
Assistant Chief Legal Counsel

Tommy Evans, Jr.
Legal Counsel
South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

BY: 
Tommy Evans, Jr.
Legal Counsel

April 8, 2011

36

3

CMTI100D

SCDC OFFENDER MANAGEMENT SYSTEM

01/13/96

COMMITMENT APPLICATION

CONVICTION SUMMARY

SMITHKIM

SCDC # 96883

JAMES, JR., ISIAH -

CURR LOC: RIDGELAY

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY: UNCLASS

CURR SENT SERVING CAT: UNCLASS

NUM	CONVICTION OFFENSE	INCARC SENT	SENT	SENT	SENT	PROJ COMP	STAT	INI
		YRS MO DYS	DATE	START				
?_ * S00002	ARMED ROBBERY	025 00 000	06/18/79	12/14/78	11/26/2023	ACT	L	
?_ S00001	MANSLAUGHTER	060 00 000	06/18/79	12/14/78	10/14/2010	ACT	L	

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...

PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

37

CM

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

01/13/99

SCDC ID: 00096883
JAMES, JR., ISIAH -

SMITHKIM
LOC: RIDGELAND

OFFENDER CATEGORY: UNCLASSIFIED
CURR SENT SERVING CAT: UNCLASSIFIED

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...
TOTAL SENTENCE...: 085-00-000 CONSECUTIVE SENTENCE ...: Y
CURRENT SENTENCE: 085-00-000 CURRENT SENT START DATE: 12/14/1978

PROJECTED COMPLETION DATES

MAXOUT DATE: 11/26/2023 CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 02/01/1988 NEXT PAROLE HEARING DATE: 03/18/2001

TOTAL GT DAYS EARNED: 004740 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 001565 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ..: 007229

PFKEYS: 5: HISTORY OF DATE CHANGES

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2005CP4002795

IN THE COURT OF COMMON PLEAS

Isiah Jr James

vs.

S C Dept of Prob Parole & Pardon Services

Plaintiff

Defendant

CHECK ONE:

[] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[X] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. NO JURY doctrine so motion to dismiss is granted

[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other: Formal Order to follow

[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j) SCRPC; [] Bankruptcy: follow

[] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

[] Other:

[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

[] Affirmed; [] Reversed; [] Remanded; [] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED:

[] See attached order;

[X] Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this 31 day of August, 2011.

PRESIDING JUDGE

This judgment was entered on the 2 day of Sept, 2011, and a copy mailed first class this day of Sept, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Isiah Jr James
Isiah Jr James

Barton J Vincent

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

38

JEANETTE W. MCBRIDE
CLERK OF COURT
2011 SEP - 1 PM 3:02
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
)
 Isiah James, Jr. SCDC# 96883,)
)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 C/A No.: 2005-CP-40-02795
 ALJ Docket No.: 03-ALJ-15-00032-AP

ORDER

2011 SEP 26 AM 11:42
 JEANETTE W. McBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

This matter comes before this Court by way of motion for dismissal filed by the Respondent the South Carolina Department of Probation, Parole and Pardon Services. Within this motion the Respondent is seeking an order from this court to dismiss the Appellant notice of appeal regarding the decision of the Administrative Law Court (ALC), affirming the denial of parole.

On June 18, 1979, the Appellant was convicted of two counts of voluntary manslaughter, and armed robbery. The Appellant was sentenced to a period of incarceration totaling eighty-five (85) years.¹ He initially appeared before the Parole Board on February 17, 1998, upon the conclusion of this hearing the Board denied him an opportunity for parole. Since this initial denial the Appellant has appeared before the Parole Board bi-annually. After his denial in 2003 the Appellant filed a notice of appeal before the ALC. He argued that it is unconstitutional for him to be allowed to appear before the board bi-annually. On May 19, 2003, the Honorable Ralph King Anderson, III ruled that due to Department policy existing at the time he committed

¹Sixty years (60) for voluntary manslaughter and twenty-five (25) for armed robbery to be served consecutively, he completed his sentence for armed robbery on October 19, 2010.

the offense no violation of ex post facto exist. The Appellant filed a complaint in the Richland County Court of Common Pleas. A hearing was held before the Honorable Alison Renee Lee who decided to grant the Defendant's motion for summary judgment. At the conclusion of this hearing the Appellant filed a notice of appeal before the South Carolina Court of Appeals. The Court decided to affirm the decision of the lower court. See, James v. South Carolina Department of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008).

After this decision, the Appellant filed another notice of appeal before the ALC. Within this appeal the Appellant argued that only having five (5) Board members were present not constituting a quorum in violation of due process. On May 16, 2006, Judge Anderson once again ruled that a quorum was present, and the Appellant was not denied due process. The Appellant again filed a notice of appeal before the South Carolina Court of Appeals, who affirmed the decision of the ALC. See, James v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 564, 660 S.E.2d 288 (2008).

The Appellant has filed a complaint regarding the decision of the ALC. Within this complaint the Appellant alleges that the Circuit Court did not have the jurisdiction to hear his 1979 conviction; and, the decision of the ALC was unconstitutional. This Court does not have subject matter jurisdiction over the case at bar, so this cause of action must be dismissed.

The Appellant request this Court reverse his 1979 conviction. He argues that the Sumter County Circuit Court did not have subject matter jurisdiction over his original conviction. Pursuant to the South Carolina Rules of the Appellant Court, a notice of appeal must be served on all respondents within ten (10) days after the sentence is imposed. Rule 203 (b)(2) SCACR. Over thirty (30) years have passed since this conviction. The appeal made by the Appellant in 2011 goes well beyond the time allotted under the rules of the Appellant Court. Since the


40

Appellant failed to follow the time allotted under the rules, this court must dismiss this appeal. If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed. Rule 203(d)(3) SCACR.

The Appellant filed a notice of appeal in the Court of Common Pleas regarding a decision made by the Administrative Law Court, this Court does not have jurisdiction. The Court of Appeals has jurisdiction over any case in which an appeal is taken from an order, judgment or decree of the circuit court, family court, a final decision of an agency, a final decision of an Administrative Law Judge, or the final decision of the Workers Compensation Commission. S.C. Code Ann. §14-8-200. For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellant Court Rules in civil case and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. S.C. Code Ann. §1-23-610. Since this case goes beyond the jurisdiction of the Circuit Court it must be subject to dismissal.

THEREFORE IT IS ORDERED that Appellant's cause of action is hereby dismissed with prejudice.

IT IS SO ORDERED this 26 day of Sept, 2011


The Honorable DeAndrea Gist Benjamin
Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that this 'Record on Appeal' contains all material(s) proposed to be included by any of the parties and no other material(s) herein.

_____, 201__

S/

Isiah James, Jr., 96883
RGIY CA-52, P. O. Box 2039
Ridgeland, S. C. 29936

CERTIFICATE OF SERVICE

Appellant hereby certifies that he has caused true and correct copies of the 'RECORD ON APPEAL' to be mailed, postage prepaid, to respondent's attorney (Tommy Evans, Jr.) General Counsel of SGOPPPS, P. O. Box 50666, Columbia, S. C. 29250, this _____ day of _____ 201__.

S/-----

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

Case No. 2005CP4002795

ISIAH JAMES, JR.,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES (SODPPPS),

RESPONDENT.

BRIEF OF APPELLANT

Isiah James, Jr., 96883
PRO PER
RCI, CA-52, P. O. Box 2039
Ridgeland, South Carolina 29936

TABLE OF CONTENT(S)

STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF STATE V. MACK ET AL.	1
STATEMENT OF THE CASE	1
ARGUMENT(S):	
I. COURT OF COMMON PLEAS FOR RICHLAND COUNTY ERRED FINDING IT DID NOT HAVE JURISDICTION TO ENTERTAIN THE 2005 APPEAL FROM ALC	1-4
II. THE TRIAL (COURT OF GENERAL SESSIONS FOR SUMTER COUNTY) OF 6-18-79 LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE JAMES TO THE 25 YEAR CONSECUTIVE SENTENCE AS SUCH ACT WAS CONTRARY TO THE LAW OF THE CASE DOCTRINE AND CIRCUIT COURT JUDGE'S POWER(S)	4-8
CONCLUSION	8
CERTIFICATE OF APPELLANT	8
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITY
Cases

<u>Al-Shabazz v. State</u> , 527 S.E. 742 (2000)	2-3
<u>Belton v. State</u> , 443 S.E.2d 554 (1994)	6
<u>Binkley v. Burry</u> , 573 S.E.2d 838 (S.C. App. 2002)	7
<u>Brown v. State</u> , 540 S.E.2d 846 (2001)	7
<u>Cook v. Taylor</u> , 252 S.E.2d 923 (1977)	4
<u>Cooper v. SCDPPPS</u> , 661 S.E.2d 106 (2008)	3
<u>Capreen v. State</u> , 525 S.E.2d 514 (2000)	5
<u>Ex Parte State</u> , 210 S.E.2d 600 (1974)	7
<u>Furtick v. SCDPPPS</u> , 576 S.E.2d 146 (2003)	2
<u>James v. SCDPPPS</u> , 656 S.E.2d 399 (S.C. App. 2008)	2
<u>Matter of Harry C.</u> , 313 S.E.2d 287 (1984)	4
<u>State v. Ariail</u> , 426 S.E.2d 751 (1993)	5
<u>State v. Barreso</u> , 493 S.E.2d 854 (1997)	5
<u>State v. Gentry</u> , 610 S.E.2d 494 (2005)	4
<u>State v. Mack et al.</u> ,	1, 4
<u>State v. Thomason</u> , 534 S.E.2d 788 (S.C. App 2000)	7
<u>Tatnall v. Gardner</u> , 564 S.E.2d 377 (S.C. App. 2002)	3

Constitution

South Carolina Const.:	
Article I, section 22	4
Article V, section 11	4

Statute(s)

South Carolina Code Ann.	
Section 1-23-510	2

Other Authority

South Carolina Court Rule(s): Rule 4(b) of South Carolina Rules of Criminal Procedure (SCR CrimP) formerly Rule 60 of Circuit Court Practice Rules	7
--	---

STATEMENT OF ISSUES ON APPEAL

I. DID THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY ERR FINDING THAT IT DID NOT HAVE (SUBJECT MATTER) JURISDICTION TO ENTERTAIN THE 2005 APPEAL FROM THE ADMINISTRATIVE LAW COURT (ALC)?

II. WHETHER THE TRIAL (COURT OF GENERAL SESSIONS FOR SUMTER COUNTY) OF 6-18-79 LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE JAMES TO THE 25 YEAR CONSECUTIVE SENTENCE AS SUCH ACT WAS CONTRARY TO THE LAW OF THE CASE DOCTRINE AND CIRCUIT COURT JUDGE'S POWER?

STATEMENT OF STATE V. MACK ET AL.

James was arrested on or about 12-14-78; there was a preliminary hearing in March 1979; he was required to appear in the Court of General Sessions for Sumter County on 3-26-79 (R. p.) and 6-1-79 (R. p.) which consisted of an arraignment and pre-trial motions proceedings. The Court accepted guilty pleas and administered on 6-18-79 sentence of 30, 30 and 25 years consecutively.

STATEMENT OF THE CASE

Appellant became eligible for parole release on or about 2-17-88; it was disapproved; he made subsequent application(s) for parole release thereafter. When he was denied parole in March 2001, he brought this action (appeal) before the ALC raising the claim(s) therein. The ALC issued an order on 5-19-05 which was timely appealed to the Circuit Court. (R. p.) The circuit court conducted a hearing on 8-31-11 wherein it entertained respondent's motion to dismiss (R. p.); the circuit court issued an order on 9-26-11. (R. p.) This appeal follows:

I. THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY ERRED FINDING THAT IT DID NOT HAVE (SUBJECT MATTER) JURISDICTION TO ENTERTAIN THE 2005 APPEAL FROM THE ALC

The Court of Common Pleas for Richland County erred finding that it did not have (subject-matter) jurisdiction to entertain the 2005 appeal from the ALC.* Furtick v. SCDPPPS, 576 S.E.2d 146, (2003). Respondent executed the 4-8-11 motion to dismiss and submitted it to the lower court. It contained inaccurate information:

On March 5, 2003, the Appellant filed a notice of appeal before the Administrative Law Court (ALC) arguing that it is unconstitutional for him to be allowed to appear before the court bi-annually. On May 19, 2005, the Honorable Ralph King Andersen, III ruled that due to Department policy existing at the time he committed the offense, no violation of ex post facto exist. Upon receiving this decision the Appellant filed a notice of appeal before the South Carolina Court of Appeals. The Court of Appeals decided to affirm the decision of the ALC. James v. South Carolina Department of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008). (R. p.)

James v. SCDPPPS, 656 S.E.2d 399 (S.C. App. 2008), dealt with an appeal from Judge Lee in the Court of Common Pleas for Richland County only. In Al-Shabazz v. State the Court wrote, "In reviewing a final decision of the administrative law judge on appeal from final decision of the Department of Corrections in a non-collateral or administrative matter, as when reviewing a final decision of an agency, the circuit court essentially sits as an appellate court to review al-

*After the appeal was filed in 2005 when James noted in June 2006 that the South Carolina General Assembly enacted section 1-23-610 under 2005-2006 Bill 3285 ('This act takes effect on July 1, 2006') was ratified 6-7-06 and approved 6-9-06. He attempted to have the ALC appeal pending in Richland County Circuit Court transferred to South Carolina Court of Appeals. Respondent opposed such transfer. (R. p.) The South Carolina Court of Appeals denied James's motion or petition for transfer on 8-23-06. (R. p.) Moreover, the error in filing is probably more attributed to the clerk's office of the ALC who was late or out-of-time with the transmittal of record of 8-14-06. see (R. p.).

leged errors committed by the administrative law judge." 527 S.E.2d 742, 744, 755 (2000). Cf. see also Cooper v. SCDPPPS, 661 S.E.2d 106 (2008).

The 8-31-11 "Form 4" Judgment in a Civil Case mentions "No jurisdiction so motion to dismiss is granted". (R. p.) Tatnall v. Gardner, 564 S.E.2d 377, 378 (S.C. App. 2002) ("this court must, on its own motion, raise the issue of subject matter jurisdiction to ensure the orderly administration of justice.") James points to respondent's attorney 5-3-01 letter which referred to "'Order of Dismissal' in Furtick v. South Carolina Department of Probation, Parole and Pardon Service (00-ALJ-04-00322-AP)" from ALC and "DPPPS understands that ALJD does not have jurisdiction to hear appeals from final decisions of the DPPPS." (R. p.)

This is where appellant's 2001 appeal was delayed wrongfully for two (2) years in the ALC. (R. p. 4-15-03 letter from ALC) In Furtick at 147 respondent argued:

that the circuit court erred in holding that the Administrative Law Judge Division ('ALJD') has jurisdiction to review the final decision of the DPPPS in this case.

The Supreme Court held the circuit court's ruling was proper which illustrates (subject matter) jurisdiction of the Circuit Court of Richland County in this appeal or matter since James filed his appeal (R. p.) in the circuit court prior to the 2006 Act. (See footnote ut supra).

SCDPPPS's Motion to dismiss and the 'Form 4' decision are re-

iterated in the 9-26-11 order, (R. p.) and it is prohibited under Al-Shabazz through Article I, 322 of South Carolina Constitution. Furtick and Article V, 311 grants the circuit court appellate jurisdiction in this appeal.

II. THE TRIAL (COURT OF GENERAL SESSIONS FOR SUMTER COUNTY) OF 6-18-79 LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE JAMES TO THE 25 YEAR CONSECUTIVE SENTENCE AS SUCH ACT WAS CONTRARY TO THE LAW OF THE CASE DOCTRINE AND CIRCUIT COURT JUDGE'S POWER(S)

The 6-18-79 Court of General Sessions for Sumter County went forward in excess of jurisdiction¹ State v. Gentry, 610 S.E.2d 494, 495 (2005) (citing Brown v. State); Gentry denotes subject matter jurisdiction ("i.e. whether the trial court has the power to hear a case"). James requests that this Court exercises judicial knowledge as it pertains to the claim or ground herein; the 6-1-79 excerpts) record shows where the court considered pre-trial motions (matters) in the case State v. Mack et al. The law of the case doctrine (as illustrated in State v. Maurice Mack) (R. p.), Rule 4(b) of South Carolina Rules of Criminal Procedure (SCRCrIMP) and Cook v. Taylor, 252 S.E.2d 923, 924 (1977) ("JUDGE CAN" NOT "VACATE AN ORDER OF REFERENCE MADE BY ANOTHER CIRCUIT COURT JUDGE") stand for the proposition that the 6-18-79 Court acted in want of jurisdiction.

More, the 3-26-79 formal arraignment (R. p.) was before

¹ Because James does not advance herein total jurisdictional defects, this does not prohibit this court from applying judicial notice and exercising its powers sua sponte where it is appropriately utilized herein; he comes to demonstrate with proof the claims set forth above herein. Matter of Harry C., 313 S.E.2d 287, 288 (1984).

the initial (first) circuit court judge whose name appellant is not familiar with. He claims also this is actually when the Court of General Sessions for Sumter County acquired jurisdiction of State v. Mack et al. State v. Artail, 426 S.E.2d 751, 752 (1993); however, what judge dis preside at the 3-26-79 term of Court should be available through public records. In addition, Judge Finney did not attempt to overrule the first judge's determination. Capreen v. State, 525 S.E.2d 514, 518 (2000) ("State has not appealed the ruling. It is therefore, the law of the case").

Further, the excerpts of the 6-1-79 'Motions' proceeding show, "The Defendants Maurice Mack and Isiah James were indicted, on Indictments Number 79GS43-139 and 79GS43-140, respectively, for two counts of murder as to each indictment." (R. p. 11. 1-30). There is not any reference(s) to an armed robbery charge during the 3-26-79 arraignment and the 6-1-79 'Motions' hearing other than where the government's attorney announced, "the information for his defense in the armed robbery case, the case has been called and will be called as murder." (R. p. 11. 2-4).

Furthermore, he stresses the agreement(s) between the 3-26-79 and 6-1-79 Court(s) for the points to State v. Barroso, 493 S.E.2d 854, 855 (1997) where the Supreme Court wrote:

The Court of Appeals held, agreeing with the State's contentions before that court, that "these were two distinct conspiracies with distinct co-conspirators, distinct time periods, distinct places of operation, distinct offenses and distinct overt acts" State v. Barroso, 320 S.C. at 16, 462 S.E.2d at 872. This holding was not challenged by the State and therefore is the law of the case. Mathis v. Johnson, 258 S.C. 321, 188 S.E.2d 466 (1972).

Cf. Belton v. State, 443 S.E.2d 554 (1994). In Belton the Court wrote, "When Belton appealed Authority's determination, the B & C Board determined that it lacked jurisdiction to hear the appeal. The reafter, Judge Stuckey issued an Order holding that the B & C Board did have jurisdiction to hear the appeal, from which Order no appeal was taken." at 557. Furthermore, in Belton the Court wrote, "Judge Kinard, however, subsequently dismissed Belton's appeal, holding that the B & C Board did not have jurisdiction. When B & C Board failed to appeal Judge Stuckey's Order, it became the law of the case."

Therein the 6-1-79 hearing was a severance motion presented which was denied and "Brady motion" was at issue. (R. p. 1. 22). The excerpts from the 4-13-81 transcript which was the evidentiary hearing in the initial APCR proceeding stated:

Q. Did you at one time prepare a motion for severance before Judge Finney?

A. Yes, I'm sure I did.

Q. And that motion was ultimately denied?

A. Yes.

(R. p. 11. 2-6).

More, when Mr. Atkinson took the stand in behalf of the government, the question(s) were posed:

Q. Was you or was you not at applicant's motion for severance?

A. No, I was not there. As I remember at that time. I believe, if I'm not mistaken, that I was not present at the time the motion was made by Mr. Gray before Judge Finney for a severance. (R. p. 11. 4-9)

As the armed robbery charge did not appear or show at the March 26, 1979 arraignment and Brady discovery motion (proceeding) was part of the 6-1-79 hearing. The government did not appeal from the 6-1-79

oral ruling.

This suggest strongly that the 6-18-79 Court of General Sessions for Sumter County was without (subject matter) jurisdiction to accept James's guilty plea and sentence him. See indictment no. 79GS43-141 therein.² (r. p.) State v. Thomason, 534 S.E.2d 788, 789 (S.G. App. 2000)("A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses"). The law of the case doctrine and Rule 4(b) of SCRCrimP divest the 6-18-79 Court of the power to convict and sentence appellant for armed robbery.

Rule 4(b) of SCRCrimP provides, "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void." This subsection was Rule 60 of Circuit Court Rules (of Practice) in 1979. It follows, the ruling(s) of severance and other motion(s) were the law of the case. Ex Parte State, 210 S.E.2d 600 (1974) and Binkley v. Burry, 573 S.E.2d 838, 843, 848 (S.G. App. 2002)

Moreover, Judge Laney did not press the armed robbery charge and/or indictment against Mack which adhered to the law of the case doctrine (the illustration is supported by the face of the record)

²The "COMMITMENT APPLICATION CONVICTION SUMMARY" shows the 60 year sentence expired 10-14-10 (R. p.) which suggests more strongly; he is incarcerated under an expired and/or void sentence. Brown v. State, 540 S.E.2d 846; 847 (2001)("The jurisdiction of a court over the subject matter of a proceeding is fundamental").

and circuit court judge's power, "one circuit court judge may not reverse or modify the order of another circuit court judge." Binkley at 843. Neither the State nor Mack appealed from the 6-18-79 proceeding - law of the case etc.

CONCLUSION

Appellant requests that this Court reverse and remand the circuit court's order granting respondent's motion to dismiss and this Court should vacate the 25 year sentence based on James's demonstration herein, right or wrong law of the case is applied.

This _____ day of _____ 2011.

Respectfully submitted,

/s/

Isiah James, Jr., 96883

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the 'Final Brief' complies with SCACR 211(a).

S/

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct _____ copies of the 'Brief of Appellant' and attachment(s) to be mailed, postage prepaid, to respondent's attorney, Tommy EVANS, Jr., at POB 50666, Columbia, S. C. 29250, this _____ day of _____ 2011.

8

S/

TABLE OF CONTENTS

Table of authoritiesii

Statement of issues on appeal.....iii

Statement of the case.....1

Arguments

1. The change in law did not increase punishment; therefore, ex post facto does not apply...3

2. This case has past the allotted time for the Court of Appeals to address his initial conviction exist.....5

Conclusion.....7

TABLE OF AUTHORITIES

CASES

Dobbert v. Florida, 432 U.S. 282, 97 S.E.2d 397 (1991). 4

Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). 4

James v. South Carolina Department of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008). 2

James v. South Carolina Department of Probation, Parole, and Pardon Services, 377 S.C. 564, 660 S.E.2d 288 (2008). 2

Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). 5

State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). 6

STATUTES

S.C. Code Ann. §14-8-200 (2011). 4

S.C. Code Ann. §24-21-610 (2011). 1

RULES

Rule 203(b)(2), SCACR 5

STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY ERR IN FINDING THAT IT DID NOT HAVE SUBJECT MATTER JURISDICTION TO ENTERTAIN THE 2005 APPEAL FROM THE ADMINISTRATIVE LAW COURT?

2. WHETHER THE TRIAL (COURT OF GENERAL SESSIONS FROM SUMTER COUNTY) OF JUNE 18, 1979, LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE JAMES TO THE TWENTY-FIVE YEAR CONSECUTIVE SENTENCE AS SUCH ACT WAS CONTRARY TO THE LAW OF THE CASE DOCTRINE AND CIRCUIT COURT JUDGE'S POWER?

STATEMENT OF THE CASE

On October 25, 1978, the Appellant along with his co-defendant Maurice Mack robbed Mr. Gary Cusamano, and Mr. Norman Guest Reames with a pistol taking a quantity of marijuana. After this marijuana was taken both victims were shot and killed. The Appellant was later arrested and charged with two counts of murder and two counts of armed robbery. Upon plea negotiations conducted between the Appellant and the solicitors office, the murder charges were reduced to voluntary manslaughter. On June 18, 1979, the Appellant appeared before the Honorable Dan F. Laney and pled to two counts of voluntary manslaughter and one count of armed robbery. Upon the completion of his guilty plea Judge Laney sentenced the Appellant to a thirty (30) year period of incarceration for each count of voluntary manslaughter, and twenty-five (25) years for armed robbery. The Court ordered that each of these offenses were to be served consecutively, for a total of eighty-five (85) years incarceration. (R.p.9-p.10).

Pursuant to South Carolina law the Appellant became eligible for parole upon the service of ten (10) years.¹ On February 17, 1988, the Appellant appeared before the Parole Board and was denied parole. Since that initial denial the Appellant has appeared before the board an additional seven times each resulting in a denial of parole.² Upon denial in 2005 the Appellant was informed that he was not scheduled to appear for another two years. Due to this two year wait he filed a notice of appeal before the Administrative Law Court. In this appeal he argued

¹In all cases cognizable under this chapter the Board may, upon ten days written notice to the solicitor and judge who participated in the trial of any prisoner, parole a prisoner convicted of a crime and imprisoned in the state penitentiary, in a jail, or upon the public works of any country who if: sentenced to life imprisonment or imprisonment for any period in excess of thirty years, has served at least ten years. S.C. Code Ann. §24-21-610 (2011).

²The Appellant waived four scheduled appearances.

that it is unconstitutional for him to be allowed to appear before the Board bi-annually. On May 19, 2005, the Honorable Ralph King Anderson, III, Administrative Law Court Judge, decided that due to Department policy existing at the time he committed the offense, no violation of ex post facto exist. (R.p.20-p.24). Upon receiving this decision the Appellant filed a notice of appeal before the South Carolina Court of Appeals. (R.p.26). The Court of Appeals decided to affirm the decision of the ALC. James v. South Carolina Department of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008).

After this decision the Appellant filed another appeal before the ALC on May 17, 2005. Within this appeal, the Appellant argued that only having five (5) Board members present violated his due process rights. On May 16, 2006, Judge Anderson once again ruled that a quorum was present so the Appellant was not denied due process. A notice of appeal was once again filed before the South Carolina Court of Appeals; they again decided to affirm the decision of the ALC. James v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 564, 660 S.E.2d 288 (2008).

The Appellant then filed a petition for writ of habeas corpus before the United States District Court. Within this petition the Appellant again argued that his being heard by only five members of the Parole Board is a violation of due process; and, being allowed to appear bi-annually is a violation of ex post facto. Upon receiving this petition the Respondent filed a motion for summary judgment. On August 4, 2010, the Honorable Shiva V. Hodges, United States Magistrate recommended that the District Court grant the Respondent's motion for summary judgment. On October 12, 2010, the Honorable Terry L. Wooten, United States District Court Judge decided to accept the recommendations of Judge Hodges, and granted the

Respondent's motion for summary judgment. The Appellant later filed a notice a appeal before the Fourth Circuit of the United States Court of Appeals, it was dismissed on October 25, 2011.

After the decision by the ALC regarding his 2005 denial of parole the Appellant filed a notice of appeal before the Court of Common Pleas in the Fifth Judicial Circuit. Upon receipt of this notice the Respondent filed a motion to dismiss. Within this motion to dismiss the Respondent argued that the Circuit Court does not have the jurisdiction to review an ALC decision, and the Appellant's challenge to the jurisdiction of the Circuit Court falls well beyond the time limitations established by the rules. On August 31, 2011, all parties appeared before the Honorable DeAndrea Gist Benjamin to address the Respondent's motion to dismiss. On September 26, 2011, Judge Benjamin issued an order dismissing the Appellant's appeal due to the Circuit Court not having subject matter jurisdiction, and the Appellant cause of action goes beyond the allotted time limit.

The Appellant has filed a notice of appeal before the South Carolina Court of Appeals. In this appeal he argues that the Circuit Court erred in determining that subject matter jurisdiction does not exist, or that he fell well beyond the time allotted to determine if he was sentenced unlawfully. The Respondent argues that the decision of the Circuit Court was lawful, so the decision should be affirmed. The final brief of the Respondent follows.

ARGUMENT

- 1. **THE CHANGE IN THE LAW DID NOT INCREASE PUNISHMENT; THEREFORE, NO VIOLATION OF EX POST FACTO EXIST.**

The Appellant argues that the Circuit Court erred in making the determination that they do not have subject matter jurisdiction over the appeal of the decision of the ALC. When the

Appellant committed his crime in 1978 South Carolina law did allow the Circuit Court to hear any appeal of the decision of the ALC. That law was changed in 2006 allowing the Court of Appeals jurisdiction over any case in which an appeal is taken from an order, judgment or decree of the circuit court, family court, a final decision of an agency, a final decision of an Administrative Law Judge, or the final decision of the Workers Compensation Commission. S.C. Code Ann. §14-8-200. The Appellant argues that by the Circuit Court not deciding his appeal this was in violation of ex post facto.

When he committed the crime the law allowed an ALC decision to be reviewed by the Circuit Court. The law existing at the time of the offense and not at the time of sentencing, determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). However, the changing of the law allowing the Court of Appeals to review the decisions of the ALC cannot be considered an increase of punishment or a reduction of benefits; therefore, this cannot be considered a violation of ex post facto. In Dobbert v. Florida, 432 U.S. 282, 97 S.Ct. 2290 (1977), the United States Supreme Court defined the violation of ex post facto, Dobbert, specifically states:

Any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto.

Dobbert, at U.S. 292, S.Ct. 2298.

There has never been an increase of punishment; nor has the punishment become more burdensome; nor has the Appellant been deprived any defense due to this case being presented before the Court of Appeals rather than the Circuit Court. He continues to remain incarcerated

for the same offense for the same number of years, and the Court of Appeals would have the identical burden in making a determination of an error. The review of this case by the Court of Appeals cannot be considered an increase in punishment. Regarding the issue of whether an increase of punishment constitutes an ex post facto violation, the relevant inquiry is whether the legislative amendment produces a sufficient risk of increasing the measure of punishment attached to the covered crimes. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). The Appellant has not shown how the Court of Appeals reviewing the decision of the ALC can be considered a increase in punishment; therefore, this cannot be considered a violation of ex post facto.

2. THIS CASE HAS PAST THE ALLOTTED TIME FOR THE COURT OF APPEALS TO ADDRESS HIS INITIAL CONVICTION.

The Appellant argues that the Circuit Court lacked subject matter jurisdiction to sentence him on his original conviction. It is his position that the Court should not have been in session the particular week his case was heard; therefore, the presentation of his case to the Circuit Court was in error, and his initial conviction should be subject to dismissal.

The Appellant was originally convicted of voluntary manslaughter and armed robbery on June 18, 1979. At the time of his conviction the Appellant failed to raise the lack of subject matter jurisdiction before the sentencing judge, he also failed to raise the issue on appeal. Over thirty (30) years have passed since his conviction; therefore, the Appellant is well past the time limit established under the rules of the Appellant Court.

In General Sessions Court a defendant only has ten (10) days after a plea or trial resulting in conviction to file a notice of appeal on all respondents. Rule 203(b)(2), SCACR. Once the

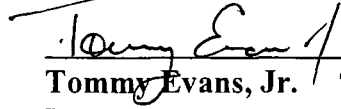
Appellant failed to file this notice of appeal he has waived his ability to address the matter regarding the jurisdiction of the Circuit Court in his initial sentence.

The Appellant makes the argument that the Circuit Court should not have been in session for that week in Sumter County. This argument should have been raised before the sentencing judge. It was not raised so it was not preserved for appeal. If asserted errors are not presented to the lower court, the question cannot be raised for the first time on appeal. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). The Appellant failed to bring this before the proper court at the proper time, he is not entitled to bring this before the Court at this time, so the decision of the lower court should be affirmed.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the Circuit Court be affirmed.

Respectfully submitted,



Tommy Evans, Jr.

Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Attorney for the Respondent.

Columbia, South Carolina
April 18, 2012

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
The Honorable DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2011199967

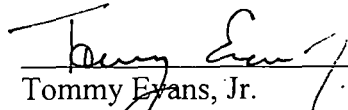
ISAIAH JAMES, JR., APPELLANT

v..

SOUTH CAROLINA DEPARTMENT OF PROBATION
PAROLE AND PARDON SERVICES, RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



Tommy Evans, Jr.
Legal Counsel

April 18, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

Case No. 2005CP4002795

ISIAH JAMES, JR.,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES (SCDPPPS),

RESPONDENT.

REPLY BRIEF OF APPELLANT

Isiah James, Jr., 96883
Pre Per
RCI, CA-52, P. O. Box 2039
Ridgeland, S. C. 29936

TABLE OF AUTHORITIES
(Cases)

<u>Allison v. W. L. Gore & Associates,</u> 714 S.E.2d 5477 (2011)	2
<u>Brown v. State,</u> 540 S.E.2d 846 (2001)	3
<u>Gray v. Club Group, LTD.,</u> 528 S.E.2d 435 (S.C. App. 2000)	2
<u>Martin v. Paradise Cove Marina,</u> 559 S.E.2d 348 (S.C. App. 2001)	2
<u>Matter of Harry G.,</u> 313 S.E.2d 287 (1984)	3
<u>McLenden v. Dept. of Hwys. & Pub. Transp.,</u> 443 S.E.2d 439 (1990)	2
<u>State v. Amerson,</u> 428 S.E.2d 871 (1993)	4
<u>State v. Brown,</u> 570 S.E.2d 559 (S.C. App. 2002)	3
<u>State v. Greems,</u> 540 S.E.2d 99 (2000)	3
<u>State v. Thomason,</u> 534 S.E.2d 788 (S.C. App. 2000)	3
<u>Thomas & Howard Co. v. T.W. Graham and Co.,</u> 457 S.E.2d 340 (1995)	2

Statutes

South Carolina Code Ann.:	
section 1-23-500 (2010)	3
section 1-23-610 (2006)	2

TABLE OF CONTENT(S)

Statement of Issues on Appeal	1
Statement of the Case	1
Argument(s):	
I. The Court of Common Pleas for Richland County erred finding the it did not have (subject matter) jurisdiction to entertain the 2005 appeal from ALC.	1-2
II. The trial (Court of General Sessions for Sumter County) of 6-18-79 lacked subject matter jurisdiction to convict and sentence James to the 25 year consecutive sentence as such act was contrary to the law of case doctrine and circuit court judge's power	2-4
Conclusion	4
Certificate of Appellant	5
Certificate of Service	5

and/or substantial evidence) governed its appellate review. Gray v. Club Group, LTD., 528 S.E.2d 435, 439 (S.C. App. 2000) ("this Court, and Circuit Court, has both the power and the duty to review entire record and find therefrom jurisdictional facts").* Though appellate court(s) has held in Martin v. Paradise Cove Marina, Inc., 559 S.E.2d 348, 351 (S.C. App. 2001) (1st question of subject matter jurisdiction is a question of law for the court.)

More, in Thomas Howard Co. v. T.W. Graham and Co., 457 S.E. 2d 340, 351 (1995) ("There is wide difference between a want of jurisdiction in which case court has no power to adjudicate at all and mistake in the exercise of undoubted jurisdiction"). The 9-26-11 order declared wrongfully, "The Appellant filed a notice of appeal in the Court of Common Pleas regarding a decision made by the" ALG, "this Court does not have jurisdiction". (R. p. 41). Again, JAMES's timely 6-7-05 notice of appeal was filed long before the 2006 Act No. 387, 35 of section 1-23-610 of S. C. Code Ann. eff. 7-1-06 (R. p. 26) and the Allison v. W. L. Gore & Associate, 714 S.E.2d 547 (2011), decision should not affect review standard(s) only definition(s) ("The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction rather than subject matter jurisdiction, overruling ...")

The circuit court erred granting respondent's motion to dismiss.

2: The trial (Court of General Sessions for Sumter County) of 6-

*Cf. McLendon v. Dept. of Hwys. & Pub. Transp., 443 S.E.2d 539, 540 (1990) (Question of subject matter cannot be waived.)

STATEMENT OF ISSUES ON APPEAL

I. Did the Court of Common Plea for Richland County err finding that it did not have (subject matter) jurisdiction to entertain the 2005 appeal from the Administrative Law Court (ALC)?

III. Whether the trial (Court of General Sessions for Sumter County of 6-13-79) lacked subject matter jurisdiction to convict and sentence James to the 25 year consecutive sentence as such act was contrary to the law of the case doctrine and circuit court judge's power?

STATEMENT OF THE CASE

Respondent submitted the 3-29-12 brief which (statement of the case) states:

After the decision by the ALC regarding his 2005 denial of parole the Appellant filed a notice of appeal before the Court of Common Pleas in the Fifth Judicial Circuit. Upon receipt of this notice the Respondent filed a motion to dismiss. Within this motion to dismiss the Respondent argued that the Circuit Court does not have the jurisdiction to review an ALC decision, and the Appellant's challenge to the jurisdiction of the Circuit Court falls well beyond the time limitations established by the rules. (p. 3).

There is no additional proposed designation by the respondent and James submits the reply brief herein.

ARGUMENT(S)

1. The Court of Common Pleas for Richland County erred finding that it did not have (subject matter) jurisdiction to entertain the 2005 appeal from ALC. It was clearly error where the circuit court's Form 4 mentioned, "No Jurisdiction so motion to dismiss is granted". (R. p. 38). The circuit court did not reach the issues appellant briefed before it and/or the ALC as there was no reference to whether what standard (preponderance of

1A-79 lacked subject matter jurisdiction¹ to convict and sentence James to the 25 year consecutive sentence as such act was contrary to the law of case doctrine and circuit court judge's power. The 9-26-11 order avers, "The Appellant request this Court reverse his 1979 conviction. He argues that the Sumter County Circuit Court did not have subject matter jurisdiction over his original conviction". (R. p. 40).

Respondent's brief relates, "The Appellant was originally convicted of voluntary manslaughter and armed robbery on June 18, 1979. At the time of his conviction the Appellant failed to raised the lack of subject matter jurisdiction before the sentencing judge, he also failed to raise the issue on appeal". (p. 5) Brown v. State, 540 S.E. 2d 846, 848 (2001)(lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.) See also State v. Brown, 570 S.E.2d 559 (S.C. App. 2002).

James did not waive issue by guilty plea. State v. Taomasen, 534 S.E.2d 788 (S.C. App. 2000). There is section 1-23-500 of S. C. Code Ann. (2010) about ALC "which is an agency and a court of record" is not a judicial court and cannot take judicial notice. Matter of Harry C., 313 S.E.2d 287 (1984). ALC utilizes appellate jurisdiction therein and review based on substantial evidence standard where he did not raise this issue herein; however, it was raised in the circuit court.

The 9-26-11 order averred, "notice of appeal must be

¹State v. Green, 540 S.E.2d 99 (2000)("defendant was required to prove by a preponderance of the evidence") but see Brief of Appellant (pp. 5-7)

served on all respondents within ten (10) days after the sentence is imposed" (R. p. 40) The government's attorney did assert on 6-1-79, "the case has been called and will be called as murder" (R. p. 6 ll. 3-4). The circuit court judge ruled, "That one would be granted with the exception of if there are people within the State's file ..." (R. p. 6 ll. 23-25)² Moreover, the trial judge "denied" the severance 6-1-79 motion (R. p. 12: 1. §).

The circuit court judge adhered to the law of the case doctrine where Armed robbery indictment was "nolle proes as to Maurice Mack" (R. p. 10) while he exceeded his authority, overruling the initial circuit court judge of 3-26-79 on the armed robbery indictment against appellant. (R. p. 2) The circuit court judge should have denied respondent's motion to dismiss and applied the preponderance of evidence standard to the claim herein, granting vacation of the 25 year sentence which would require James's release forthwith. (R. p. 37)

CONCLUSION

Wherefore, the ruling of the lower court should be reverse. Respectfully submitted this 26 day of April 2012.

/s/

Isiah James, Jr., 96883

²Cf. State v. Amerson, 428 S.E.2d 871, 873 (1993) (appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.)

CERTIFICATE OF APPELLANT

Appellant hereby certifies the 'Final' Reply Brief of Appellant complies with Rule 211(a) and (b) of SCACR.

/s/

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Final' Reply Brief of Appellant and attachment(s) to be mailed, postage prepaid, to respondent's attorney (Tommy Evans, Jr.) P. O. Box 50666, Columbia, S. C. 29250, this 29 April 2012.

S/

78

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Isiah James, Jr., Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, Respondent.

Appellate Case No. 2011-199967

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Unpublished Opinion No. 2012-UP-503
Submitted September 4, 2012 – Filed September 5, 2012

AFFIRMED

Isiah James, Jr., pro se.

Tommy Evans, Jr., of the South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities:

1. As to whether the circuit court lacked jurisdiction to hear an appeal from the Administrative Law Court: S.C. Code Ann. § 14-8-200(a) (Supp. 2011) ("[The court of appeals] has jurisdiction over any case in which an appeal is taken from . . . a final decision of [the Administrative Law Court] . . ."); *State v. Stahlnecker*, 386 S.C. 609, 619, 690 S.E.2d 565, 570 (2010) ("A change in the law does not violate the ex post facto clause if it merely affects a mode of procedure and does not alter substantial personal rights.").

2. As to whether the circuit court erred in refusing to reverse James's 1979 convictions: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address remaining issues when the determination of a prior issue is dispositive of an entire appeal).

AFFIRMED.¹

FEW, C.J., WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In The Court of Appeals

Isiah James, Jr., Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services (SCPPPS), Respondent.
Appellate case no. 2011-199967

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge
unpublished Opinion No. 2012-UP-503
Filed September 5, 2012

TO: Tommy Evans, Jr.
POB 50666
Columbia, SC 29250

PETITION FOR REHEARING
WITH SUGGESTION ~~REHEARING~~ EN BANC

Appellant James hereby petitions this Court for re-hearing under Rule 221(a) of South Carolina Appellate Court Rules (SCACR) with suggestion for rehearing en banc. He points that it is apparent there were fact(s) and law(s) the court misapprehended and overlooked as they are set forth below herein.

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

2

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

1. The Court in unpublished opinion No. 2012-UP-503 (filed 9-5-12) cited *State v. Stahlmecker*, 690 S.E.2d 565, 570 (2010) which is misplaced; see *Dove v. Gold Kist, Inc.*, 442 S.E.2d 598 (1994) ["Employer moved to dismiss appeal, ... Court, ... granted motion."] (which was reversed by High Court);

2. The panel of this court overlooked the relevant fact that James's 6-7-05 notice of appeal (R. pp. ~~25-36~~ 25) was timely filed in the circuit court before SCACR 205 of 5-3-07 was changed according to "Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387" and his appeal would properly apply or fall under *Al-Shabazz v. State*, 527 S.E.2d 742, 744, 755 (2009) ["circuit court essentially sits as appellate court to review..."] and *Furtick v. SCDPPPS*, 576 S.E.2d 146, 148 (2003). See also *Tant v. SEDC*, 718 S.E.2d 753 (S.C. App. 2011) and *Allison v. W.L. Gore & Associates*, 714 S.E.2d 547 (2011)

3. The court's panel misapprehended the law and order of 8-23-96 of Justice Cureton which stated, "This Court acts only pursuant to Notices of Appeal. DISMISSED" (R. p. 30) this appeal in 2006 as premature;

4. This court's panel misapprehended the argument of respondent's attorney Aplin of 8-19-2006 which stated "Because this appeal is premature, the Department is ask-

ing that it and all of Mr. James's motions be dismissed" (R. p. 29) where he asked "this court to accept appellate jurisdiction despite the fact that the circuit court has yet to rule on either matter" when James acknowledged the 2006 Act No. 387;

SUGGESTION FOR REHEARING ENBANK
S.C.A. (R. 219(a))

5. Unpublished opinion no. 2012-UP-503 (filed 9-5-12) references "S.C. Code Ann. § 14-8-200(a) (Supp. 2011) ("[The court of appeals] has jurisdiction over any case in which an appeal is taken ... a final decision of [the Administrative Law Court] ...")" (p. 2) (cf. see James v. SCDPPPS, 660 S.E.2d 298 (S.C. App 2008) (which was appealed after summer, July 2006); the court misapprehended and overlooked James's appeal herein was ruled on by ALC on or about 5-19-05 and was appealed to circuit court on 6-7-05;

6. This is appeal from 3-21-01 notice of rejection by SCDPPPS (R. p. 16) and it is real and true the clerk's office of ALC withheld "Record and Certification" from circuit court until 8-14-06 (R. p. 28) which resulted in delay in circuit court processing appeal under Al-Shabazz and Furtick appeal precedents) (R. p. 33)

7. Respondent's motion to dismiss references (CA No: 2005-CP-40-02795 which denotes a 2005 filing)

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

8. Respondent's 5-3-01 letter to appellant notes or points; it was in receipt of (notice of) appeal and brief (B. p. 17) that were submitted to ALC which failed to process appeal until 4-15-03 (B. p. 18) (denying right to prompt appeal);

9. Appellant submitted 8-8-05 request for hearing (B. p. 27) to circuit court as it pertains to 2005 appeal;

10. Moreover, the question which was properly before the court's panel was whether the Circuit Court of Richland County in 2005 had jurisdiction to entertain an appeal from the ALC, not whether the circuit court in 2010 or 2011 had jurisdiction to hear an appeal from the ALC;

11. Further, it took the circuit court six (6) years and several months to hear James's appeal where SCPPPS filed 4-8-11 motion to dismiss 5 years and 11 months after appeal was submitted to circuit court;

12. The court's panel unpublished opinion no. 2012-UP-503 (filed 9-5-12) mentioned, "court need not address remaining issue ..." (p. 2) is apparent that panel did not read or reach issue 2 where court supposedly complied with In re MEMORANDUM DECISIONS BY COURT OF APPEALS, 471 S.E.2d 456, 457 (1993) ("the Court of Appeals may only do so when an issue is manifestly without merit.")

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

2

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

Are Al-Shabazz and Furtick appeals procedure right(s) without merit(s), because these are the appeal precedent(s) this Court has misapprehended and overlooked issue(s) herein this appeal.

This Court should grant the petition for rehearing herein, applying the appropriate appellate review standard, sua sponte jurisdictional issues), State v BROWN, 570 SE2d 559 (Fl. App. 2002) as the circuit court erred granting respondent's motion to dismiss appeal. This 13 day of September 2012.

Respectfully submitted.

Isiah James, Jr., 96883
Rt. 1, PO B 2039
Ridgeland, SC 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the petition for rehearing etc. and attachment(s) to be mailed, postage prepaid, to respondent's attorney whose name and address are set forth above herein. this 16 day of September 2012.

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

2

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

LEGAL MAIL

The South Carolina Court of Appeals

Isiah James, Jr., Appellant,

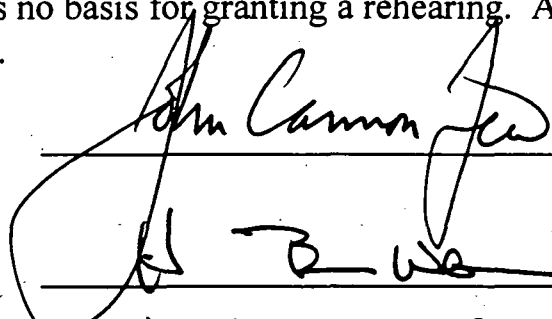
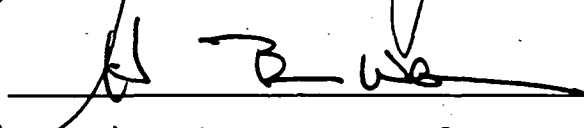
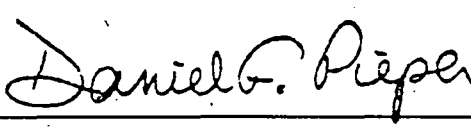
v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

Appellate Case No. 2011-199967

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

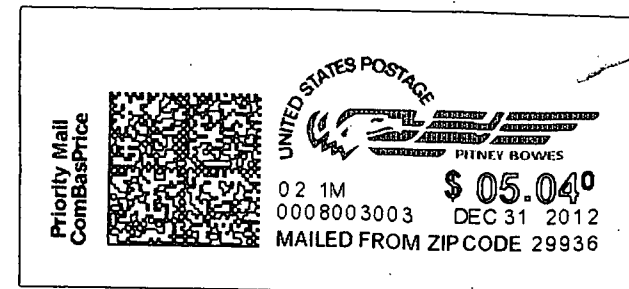
	C. J.
	J.
	J.

Columbia, South Carolina

cc:
Isiah James, Jr., 00096883
Tommy Evans, Jr.
DeAndrea G. Benjamin

FILED 78
December 5, 2012

Isiah James, Jr., 96883
RCI, CA-52
P.O. Box 2039
Ridgeland, SC 29936



RIDGELAND CORRECTIONAL
INSTITUTION

DEC 31 2012

MAILROOM

LEGAL MAIL

TO: DANIEL SHEAROUSE
CLERK OF SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA

29211