

July 30, 2014

plr

SOUTH CAROLINA SUPREME COURT
Office of the Clerk
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

AUG 06 2014

S.C. SUPREME COURT

RE: THOMAS M. FAIR, JR. # 75721 v. STATE OF
SOUTH CAROLINA, CASE No. 2013-CP-43-1990

DEAR Ms. JAR:

Please find enclosed a Petition For A
Writ of Certiorari, the FINAL ORDER OF DISMISSAL
to the above case. The loose pages are my
attempt to replace what the COURT OF COMMON
PLEAS did not send back with the FINAL ORDER
of Dismissal. PETITIONER would APPRECIATE
A COPY of the FINAL ORDER of Dismissal for
his files.

Sincerely,

Thomas M. Fair, Jr.
THOMAS M. FAIR, JR.,
PETITIONER

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THOMAS M FAIR, JR., #75721

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPEAL FROM SUMTER COUNTY

COURT OF COMMON PLEAS

VS. JEFFREY YOUNG, CIRCUIT COURT JUDGE

CASE NO. 2013-CP-43-1990

PETITION FOR A WRIT OF CERTIORARI

THOMAS M. FAIR, JR., #75721

LEE CORRECTIONAL INSTITUTION

990 WISACKY HIGHWAY

BISHOPVILLE, SOUTH CAROLINA 29010

PETITIONER

DANIEL GOURBY

ASSISTANT ATTORNEY GENERAL

POST OFFICE BOX 11549

COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR RESPONDENT

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Questions Presented

1. Did the circuit court err in not addressing the issue of Petitioner not serving his sentence in accordance to the judge's oral pronouncement?
2. Did the circuit court err in not addressing the total aggregate sixty six year sentence?

Statement of the Case

The Petitioner was confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Sumter County Clerk of Court. The Petitioner was indicted during the April 1983 term of the Sumter County Grand Jury for: ESCAPE, three counts of Housebreaking, three counts of Larceny, ARM Robbery, MURDER, and CRIMINAL CONSPIRACY. Attorneys Martha P. Upshur, Ernest A. Finney, III, and Arthur H. Wilder, Jr., all of Sumter South Carolina, represented him. Petitioner proceeded to a jury trial and was found guilty on August 13, 1983. The Honorable William Howard Ballenger sentenced Petitioner to the following sentence structure:

COUNT ONE: ESCAPE 2 YEARS CONSECUTIVE
COUNT TWO: LARCENY 6 YEARS CONSECUTIVE
COUNT THREE: HOUSEBREAKING 5 YEARS

COUNT FOUR: LARCENY 8 YEARS; CONSECUTIVE

COUNT FIVE: NOT GUILTY

COUNT SIX: VOLUNTARY MANSLAUGHTER 30 YEARS CONSECUTIVE

COUNT SEVEN: COMMON LAW ROBBERY 10 YEARS CONSECUTIVE

COUNT EIGHT: CRIMINAL CONSPIRACY 5 YEARS

COUNT NINE: ~~CRIMINAL~~ HOUSEBREAKING 5 YEARS

COUNT TEN LARCENY 10 YEARS CONSECUTIVE

IN HIS CURRENT PETITION FOR A WRIT OF CERTIORARI, PETITIONER ASSERTS THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASONS:

1. THE JUDGE'S ORAL PRONOUNCEMENT WAS THAT PETITIONER WERE TO SERVE HIS SENTENCE ~~IN~~ THE ORDER IN WHICH HE RECEIVED THEM, FROM COUNT ONE-TEN.
2. PETITIONER IS BEING FORCED TO SERVE A TWENTY FOUR YEAR SENTENCE WHICH HE NEVER RECEIVED FROM THE JUDGE FOR LARCENY.

PETITIONER THEN BROUGHT THIS ACTION SEEKING POST-CONVICTION RELIEF IN NOVEMBER 2013. THE CIRCUIT COURT DENIED THE APPLICATION ON JUNE 22, 2014. PETITIONER NOW SEEKS A WRIT OF CERTIORARI TO REVIEW THIS DENIAL.

ARGUMENT

1. The circuit court erred in not addressing the issue of Petitioner not serving his sentence in accordance to the judge's oral pronouncement.

Petitioner specifically complained of a twenty four year sentence which he is currently serving that was not in accordance to the judge's oral pronouncement. See Boan v. State, 695 S.E.2d 850 (2010); Tant v. South Carolina Dept. of Corrections, 395 S.C. 446, 718 S.E.2d 753 (S.C. App. 2011). Two of the aggregate larceny sentences was to be served before the voluntary manslaughter conviction. Petitioner had no reason to believe that he needed to file a post-conviction relief within a year of his conviction or within a year of his final appeal because this matter have just recently became an issue, due to the (S.C.D.C.) modifying his sentence. And, this sentence modification had just recently manifested itself during the November 20, 2013 Institutional Classification Committee review. Petitioner was clearly prejudiced by this recent modification because, in accordance to the judge's oral pronouncement, after the completion of the 10 year common law robbery sentence, he would only have a 10 year larceny sentence.

A reviewing court should exercise its

DISCRETION TO CORRECT A PLAIN ERROR ONLY WHEN IT SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. See also FEDERAL RULS 35 (b) CORRECTING OR REDUCING A SENTENCE; Rule 35 (b) (2) (A) INFORMATION NOT KNOWN TO THE DEFENDANT UNTIL ONE YEAR OR MORE AFTER SENTENCING; AND Rule 35 (c). See also Rule 35 (b) (4) WHEN ACTING UNDER Rule 35 (b), THE COURT MAY REDUCE THE SENTENCE TO A LEVEL BELOW THE MINIMUM SENTENCE ESTABLISHED BY LAW.

2. The CIRCUIT COURT ERRED IN NOT ADDRESSING THE TOTAL AGGREGATE SIXTY SIX YEAR SENTENCE.

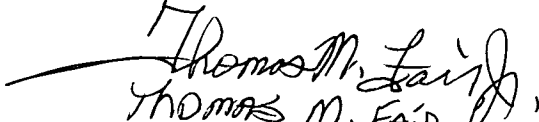
PETITIONER STATE THAT, HAD THE CIRCUIT COURT ADDRESSED THE TOTAL AGGREGATE SIXTY SIX YEAR SENTENCE, THE SENTENCE STRUCTURE IN ACCORDANCE TO THE JUDGE'S ORAL PRONOUNCEMENT, THE COURT WOULD HAVE AGREED THAT PETITIONER WOULD ONLY HAVE A TEN YEAR SENTENCE TO SERVE AFTER THE COMMON LAW ROBBERY CONVICTION. BY MODIFYING PETITIONER SENTENCE, THE SLDC HAS HIM SERVING AN ADDITIONAL 14 YEARS AFTER THE COMPLETION OF THE 10 YEAR COMMON LAW ROBBERY SENTENCE.

CONCLUSION

FOR THE REASON STATED, PETITIONER ASK THIS

Court to grant the petition for a writ of
CERTIORARI.

Respectfully submitted,


THOMAS M. FAIR, JR.

Lee Correctional Institution
990 WISACKY Highway
Bishopville, South Carolina 29010

July 30, 2014

CERTIFICATE OF SERVICE

I, Thomas M. Fair, Jr., #75721, Petitioner, do hereby certify that the foregoing Petition For A Writ of CERTIORARI has this day been served upon all parties to this action by mailing copies thereof, postage prepaid, to the following persons this 30th day of July, 2014,

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Attorney for Respondent

Sincerely,

Thomas M. Fair, Jr.
Thomas M. Fair, Jr.



RECORDED
2014 JUL -1 PM 2:42
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

June 30, 2014

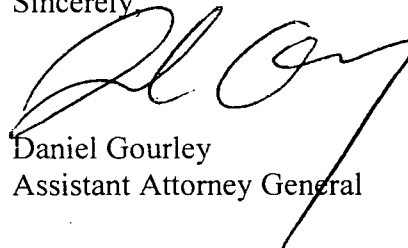
The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

Re: Thomas M. Fair, Jr., #75721 v. State of South Carolina
2013-CP-43-1990

Dear Mr. Campbell:

Enclosed please find the original **Final Order of Dismissal**, signed by The Honorable W. Jeffrey Young., in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,



Daniel Gourley
Assistant Attorney General

DG/ck
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECORDED

2014 JUL - 1 CASE NO.: 2013-CP-43-1990

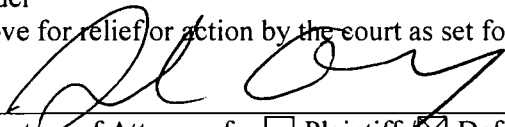
THOMAS M. FAIR, JR., #75721

JAMES C. DANIEL
CLERK OF COURT
SUMTER COUNTY, S.C.
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Thomas M. Fair, Jr., #75721, Bar No. _____ Address: Lee Correctional Institution Bishopville, SC 29010 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	June 13, 2014 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE <u>2156</u> Date: <u>6.22.14</u>
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4301990

Thomas M Fair Jr.

2014 JUL -1 PM 4:20

South Carolina State of

JAMES C. CARROLL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

[Signature]
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 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; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2156
 Judge Code

7/1/2014
 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on-, to attorneys of record or to parties (when appearing pro se) as follows:

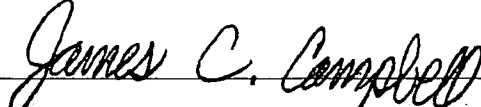
Thomas M Fair # 75721 Jr. Lee Correctional Inst/Asu #61
990 Wisacky Highway Bishopville, SC 29010

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter


James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Thomas M. Fair Jr., #75721,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2014 JUL 17 PM 2:42
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. Case No. 2013-CP-43-1990

FINAL ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 7, 2013. The Respondent made its return on March 13, 2014, requesting the application be summarily dismissed based upon statute of limitations, laches, and not cognizable claims for PCR.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 18, 2014 and filed March 24, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 10, 2014, serving the above mentioned Conditional Order of Dismissal on the Applicant.

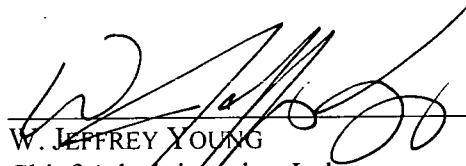
In a document captioned "Applicant Response to Respondent Return and Motion To Dismiss" and filed on April 11, 2014, the Applicant argues that he is being forced to serve a twenty four year sentence in which he never received from the judge for larceny. Applicant alleges that this change in his sentence amounts to newly discovered evidence requiring a hearing.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on April 11, 1983. As this action was filed on November 7, 2013, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This Court notes that Applicant was convicted of three separate counts of Larceny. The Honorable Duane Shuler sentenced Applicant to six year imprisonment for one count of larceny, 8 years imprisonment for a second count of larceny, and ten years imprisonment for a third count of larceny with all sentences running *consecutively*. Therefore, the aggregate total for the larceny convictions amount to a twenty-four year sentence.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 22 day of June, 2013.


W. JEFFREY YOUNG
Chief Administrative Judge
Third Judicial Circuit Court

Sumter, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

THOMAS M. FAIR, JR., #75J21
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-43-1990

Applicant Response To Respondent
Return And Motion To ~~Dismiss~~
Dismiss

IN RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL
WHICH APPLICANT RECEIVED MARCH 27, 2014, THE APPLICANT
WOULD SHOW THIS COURT:

1

"The Applicant WAS CONFINED IN THE SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF
COMMITMENT OF THE SUMTER COUNTY CLERK OF COURT." THE APPLICANT
WAS INDICTED DURING THE APRIL 1983 TERM OF THE SUMTER
COUNTY GRAND JURY FOR ESCAPE, THREE COUNTS OF HOUSEBREAKING,
THREE COUNTS OF LARCENY, ARM ROBBERY, MURDER, AND CRIMINAL
CONSPIRACY. MARTHA P. UPSHUR, ESQUIRE, ERNEST R. FINNEY, III,
ESQUIRE, AND ARTHUR H. WILDER, JR., ESQUIRE, ALL OF SUMTER,
SOUTH CAROLINA, REPRESENTED HIM. APPLICANT PROCEEDED TO
A JURY TRIAL AND WAS FOUND GUILTY ON AUGUST 13, 1983.
THE HONORABLE WILLIAM HOWARD BALLENGER SENTENCED
APPLICANT TO THE FOLLOWING SENTENCE STRUCTURE:

(1)

SENTENCE STRUCTURE:

- COUNT ONE: ESCAPE 2 YEARS; CONSECUTIVE
COUNT TWO: LARCENY 6 YEARS; CONSECUTIVE
COUNT THREE: HOUSEBREAKING 5 YEARS
COUNT FOUR: LARCENY 8 YEARS; CONSECUTIVE
COUNT FIVE: NOT GUILTY
COUNT SIX: VOLUNTARY MANSLAUGHTER 30 YEARS; CONSECUTIVE
COUNT SEVEN: COMMON LAW ROBBERY 10 YEARS; CONSECUTIVE
COUNT EIGHT: CRIMINAL CONSPIRACY 5 YEARS
COUNT NINE: HOUSEBREAKING 5 YEARS
COUNT TEN: LARCENY 10 YEARS; CONSECUTIVE

IN HIS CURRENT APPLICATION FOR POST-CONVICTION RELIEF, APPLICANT ASSERTS THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASONS:

1. APPLICANT IS BEING FORCED TO SERVE A TWENTY FOUR YEAR SENTENCE IN WHICH HE NEVER RECEIVED FROM THE JUDGE FOR LARCENY.

A. THE JUDGE'S ORDER WAS THAT APPLICANT WERE TO SERVE HIS SENTENCE IN THE ORDER IN WHICH HE RECEIVED THEM. THAT IS THE SENTENCE WAS PRONOUNCED AS FOLLOWS:

FROM COUNT ONE-TEN.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
APPLICANT BELIEVE THAT HIS APPLICATION FOR POST-CONVICTION SHOULD NOT BE

(2)

summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

AN APPLICATION FOR RELIEF FILE PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL, WHICHEVER IS LATER.

Applicant asserts that at the time of his appeal of a judgment of conviction and the filing of the final decision upon his appeal, this matter was not an issue as it have not manifested itself. Therefore, this evidence of the twenty four year sentence is newly discovered as of March 29, 2013. See attached documents of the SMU Institutional Classification Committee Review as Exhibit One, and an SCLC Request to Staff Member form requesting a transcribed copy of the November 20, 2013 ICC review that would have provided additional evidence. AS ~~Exhibit One~~ Exhibit Two. The application for post-conviction relief was filed one year after discovering the error. Applicant asserts that he is well within his rights to file this post-conviction

Relief. See Federal Rules of Criminal Procedure, Rule 35(b) CORRECTING OR REDUCING A SENTENCE; Rule 35(b)(3)(A) INFORMATION NOT KNOWN TO THE DEFENDANT UNTIL ONE YEAR OR MORE AFTER SENTENCING; AND Rule 35(c) INFORMATION THE USEFULNESS OF WHICH COULD NOT REASONABLY HAVE BEEN ANTICIPATED BY THE DEFENDANT UNTIL MORE THAN ONE YEAR AFTER SENTENCING AND WHICH WAS PROMPTLY PROVIDED TO THE GOVERNMENT AFTER ITS USEFULNESS WAS REASONABLY APPARENT TO THE DEFENDANT, SEE ALSO Rule 35(b)(4) WHEN ACTING UNDER Rule 35(b) THE COURT MAY REDUCE THE SENTENCE TO A ~~LOW~~ LEVEL BELOW THE MINIMUM SENTENCE ESTABLISHED BY LAW

(C) "Sentencing" Defined.

AS USED IN THIS RULE, SENTENCING MEANS THE ORAL ANNOUNCEMENT OF THE SENTENCE.

SEE ALSO 18 U.S.C.A. § 3553; AND 3742 B.

APPLICANT IS NOT COMPLAINING THAT THE DEPARTMENT OF CORRECTIONS (SLDC) IS NOT PROPERLY CALCULATING HIS SENTENCE OR IS OTHERWISE WITHHOLDING RIGHTFULLY EARNED CREDITS FROM HIM. APPLICANT SPECIFICALLY COMPLAINED OF A TWENTY FOUR YEAR SENTENCE

(H)

which he is currently serving that was not in accordance to the judge's oral pronouncement.

Further, the Respondent waived their right to an affirmative defense in that the Respondent did not answer the complaint in accordance to the Rules of Civil Procedure, Rule 12(a). See Kneece v. State, 269 S.C. 177 (1977); and Herring v. State, 206 S.E. 2d 85 (1974).

Applicant reiterate that he is not serving his sentence in accordance to the judge's oral pronouncement. see Boan v. State, 695 S.E. 2d 850 (2010); Tant v. South Carolina Dept. of Corrections, 395 S.C. 446, 718 S.E. 2d 753 (S.C. App., 2011).

Additionally, Applicant was clearly prejudiced by this ~~mistake~~ mistake because an additional fourteen years was added to his sentence.

A reviewing court should exercise its ~~power~~ discretion to correct a plain error only

(5)

When it seriously affects the fairness, integrity or public reputation of judicial proceedings.

Applicant further asserts that his complaint do not concern matters that could be raised on SLDC's disciplinary or grievance.

In conclusion, Applicant assert that his application should not be dismissed with prejudice, and instead, should proceed to be heard for decision.

Respectfully submitted,
Thomas M. Fair
Thomas M. Fair, Jr.
Lee Correctional Institution
990 Wilsalky Highway
Bishopville, South Carolina 29010

Bishopville, South Carolina

April 7, 2014

(4)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

THOMAS M. FAIR, JR., #75721
Applicant,

v.

State of South Carolina
Respondents

IN THE COURT OF COMMON PLEAS
2013-CP-43-1990

AFFIDAVIT OF SERVICE BY MAIL

As Applicant in the above-captioned action, I hereby certify that I have served a copy of Applicant response to the Respondent by placing it in the U.S. Mail box, postage prepaid to:

Office of the Attorney General
Attn: Daniel Gourley, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

Dated this 7th day of April, 2014

THOMAS M. FAIR, JR.
Thomas M. Fair, Jr., #75721
Applicant.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: R. Hilton - Classification Caseworker	TITLE:	DATE: 1-5-14
INMATE'S NAME: Thomas M. Fair, Jr. #75721	SCDC #:	75721
INSTITUTION: Lee C I	LIVING QUARTERS:	ASU # 61

I have two requests. I would appreciate a transcribed (written) copy of the 11-20-13 ICC Review. Also I would appreciate my copy of the 48 hour notice of that review. Without a 48 hour notice, that hearing was nothing more than a rubber stamped sham review.

DISPOSITION BY STAFF MEMBER:

I/M Fair...

You can not receive a transcribed copy of any ICC reviews, including one in question. Also you were provided the green copy of your 48 hour notice.

DATE:
1/6/14

SIGNATURE:
R. Hilton

THOMAS M. FAIR, JR. # 25721
Lee Correctional Institution
ASU # 61
990 WISACKY Highway
Bishopville, S. C. 29010

South Carolina Supreme Court
Office of the Clerk
Post Office Box 1330
Columbia, S. C. 29211

LEGAL MAIL ONLY.