

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS  
) FOR THE NINTH JUDICIAL CIRCUIT  
)  
) Indictment Nos.: 2014-GS-10-6456  
)  
)  
)  
)

FILED

2015 MAR 31 10:20  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY [Signature]  
STATE OF SOUTH CAROLINA,

)  
)  
) **ORDER DENYING DEFENDANT'S**  
) **MOTION FOR RECONSIDERATION**  
) **OF SENTENCE**  
)  
)  
)

GARY LESLEY RUCKER,  
#338007  
Defendant.

**RECEIVED**  
APR 06 2015  
SC Court of Appeals

Presiding Judge: Hon. Deadra L. Jefferson  
State's Attorney: Marian Askins, Esquire  
Defendant's Attorney: Megan Ehrlich, Esquire  
Date of Plea Hearing: March 19, 2015  
Court Reporter: Denise Lauder

This matter is before the Court on Defendant's Motion for Reconsideration of Sentence (Motion), filed March 26, 2015 with the Charleston County Clerk of Court and received by this office on March 27, 2015 regarding the prison sentence imposed by this Court on March 19, 2015 in Charleston County. Defendant is currently incarcerated at the Kirkland Correctional Institute. The State was given an opportunity to file a written response and declined; rather, the State rested on its arguments made at the plea hearing and on the indictments.<sup>1</sup> Neither party submitted additional briefs or memoranda.

<sup>1</sup> The State responded to Defendant's Motion in an email, writing: "The State has no objection to the Court amending the sentence to be consistent with the Court's intention on family court time and consistent with the co-defendant's sentence."

1/10/15  
[Signature]

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By [Signature]  
DEPUTY CLERK

~~On March 19, 2015, Defendant appeared before this Court and pled guilty to Fraud Against Financial Institute,<sup>2</sup> indictment number 2014-GS-10-6456. Defendant was sentenced to imprisonment for two (2) years. The Court gave Defendant credit for time served, pursuant to S.C. CODE ANN. § 24-13-40 (2014) and allowed his sentence on indictment number 2014-GS-10-6456 to be run concurrently to his service on a Family Court charge.<sup>3</sup>~~

“The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion.” State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). “A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Hicks, 377 S.C. at 325, 659 S.E.2d at 500. The South Carolina Supreme Court has held, “it is proper for the trial judge, in open court, in the presence of the defendant, to inquire into any relevant facts in aggravation or mitigation of punishment,” notably, “the fullest information possible concerning the defendant’s life and characteristics.” State v. Cantrell, 250 S.C. 376, 379–80, 158 S.E.2d 189, 191 (1967) (citing Williams v. People of State of New York, 337 U.S. 241, 69 S. Ct. 1079 (1949)).

This Court has no authority over the promulgation and implementation of South Carolina Department of Corrections rules and regulations; rather, the Director of the Department is vested

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<sup>2</sup> A person who commits the offense of Fraud Against a Financial Institution is guilty of a felony and must be fined not more than ten thousand dollars [(\$10,000.00)] or imprisoned for not more than five [(5)] years, or both.” See S.C. CODE ANN. § 34-3-110 (2014).

<sup>3</sup> Upon Defendant’s release from the South Carolina Department of Corrections, should Defendant have a hold placed on him by any other agency in regards to his Family Court sentence, the Family Court or the Charleston County Detention Center will determine what credit for time served the Defendant is entitled to for time served on the instant changes towards his Family Court sentence. It should be noted that the Defendant is subject to a Family Court civil contempt proceeding for which he has the ability at any time to purge himself and be released from confinement.

2 2014  
WJG

with broad, exclusive authority. ~~See S.C. CODE ANN. § 24-1-130, -140 (2014)~~ ("The director shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured."); S.C. CODE ANN. § 24-1-140 (2014) ("The director is vested with the exclusive management and control of the department and is responsible for the management of the department and for the proper care, assessment, treatment, supervision, and management of offenders under its control. The director shall manage and control the department and it is the duty of the director to carry out the policies of the department."). Further, calculation of incarceration and assignment of credit for time served is the province of the South Carolina Department of Corrections. See S.C. CODE ANN. § 24-13-40 (2014); S.C. CODE ANN. § 24-13-125 (2014); S.C. CODE ANN. § 24-13-150 (2014); S.C. CODE ANN. § 24-13-175 (2014); S.C. CODE ANN. § 24-1-210 (2014); S.C. CODE ANN. § 24-13-220 (2014).


Contrary to the Defendant's arguments outlined in his Motion for Reconsideration it was never the intention of this Court that the Defendant receive credit for the time that he was serving on his Family Court Contempt proceedings as against the active time he is serving on the current charge at the South Carolina Department of Corrections (SCDC). The Court's intention in running the sentences "concurrent" was for the local authorities to give the Defendant credit for applicable time, if any, to which he was entitled while serving his active sentence at SCDC. However, it was never the Court's intention to calculate his active sentence, make any reassurances to him as to the time remaining on his active sentence or apply any pre-detention time. The Court at no time made any assurances regarding the calculation of his remaining time

*[Handwritten signature]*

~~to be served within the SCDC. The calculation of pre-detention credits is solely within the discretion of the SCDC pursuant to S.C. CODE ANN. § 24-13-40 (2014). Further, it was never this Court's intention to give the Defendant the exact same sentence as that of the co-defendant is mentioned in his Motion.~~

This Court finds that Defendant has outlined no sound reason for this Court to alter its sentence. Defendant's Motion raises no new issues, nor proffers any arguments the Court failed to consider at Defendant's hearing. Further, this Court deems that the sentence ordered is appropriate under the facts and circumstances of the offense and the Defendant's extensive criminal record. Having fully considered Defendant's Motion for Reconsideration of Sentence, the evidence and testimony presented at the hearing including extensive aggravating and mitigating circumstances, as well as having fully reviewed the record and the various interests balanced by the Court at the time of the ruling, Defendant's Motion for Reconsideration of Sentence is hereby **DENIED** pursuant to Rule 29, SCRCrimP.<sup>4</sup>

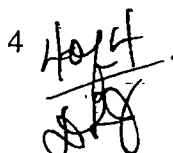
**IT IS SO ORDERED.**

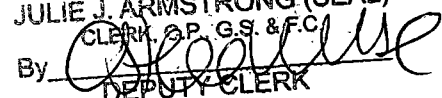
  
\_\_\_\_\_  
Deadra L. Jefferson  
Presiding Judge  
Ninth Judicial Circuit

March 30, 2015  
Charleston, South Carolina.

FILED  
015 MAR 31 AM 10:20  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

<sup>4</sup> This motion is disposed of without the necessity of a hearing and decided on the record and motions submitted by the parties. See Rule 29, SCRCrimP.

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JULIE J. ARMSTRONG (SEAL)  
CLERK, S.P., G.S. & F.C.  
By   
DEPUTY CLERK

RECEIVED

APR 06 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 2015 MAR 26 )  
 CLERK OF COURT )  
 BY MH )

IN THE COURT OF GENERAL SESSIONS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 Indictment #: 2014GS1006456  
 Warrant #: 2014A1010202930  
 Charge: Fraud Against Financial Institution

STATE OF SOUTH CAROLINA )  
 )  
 Plaintiff, )  
 vs. )  
 GARY LESLEY RUCKER, )  
 Defendant. )

MOTION FOR  
 RECONSIDERATION OF SENTENCE

PLEASE TAKE NOTICE that the above-captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the two year active prison sentence imposed upon the defendant on March 19, 2015 by the Honorable Deadra L. Jefferson, pursuant to the above-mentioned charge.

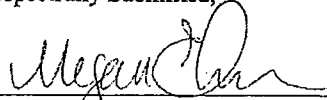
The within motion will be made upon the grounds that the sentence imposed is unnecessarily severe under the circumstances and the following grounds which were not presented at the original sentencing hearing:

1. The codefendant, Robert Frazier, entered a guilty plea on December 2, 2014, and he did not receive an active prison sentence. He was sentenced to two years suspended on the one-hundred eighty-eight (188) days already served and one year of probation. While Mr. Rucker had only served thirty-seven (37) days in jail on the charge before bonding out, the amount of time he will serve on an active two year sentence exceeds the time that Mr. Frazier, his co-defendant, served prior to receiving a probationary sentence.

2. At the time of Mr. Rucker's plea, he had been incarcerated in the Charleston County Detention Center since October 20, 2014, for child support. The Court ordered that his criminal sentence run concurrent to his "family court time." South Carolina Department of Corrections (SCDC) will not give credit towards his family court sentence, as it must be served in the county jail. Therefore, upon completion of his prison sentence, Mr. Rucker will be returned to the county jail and his family court sentence will actually run consecutively.
3. Mr. Rucker was not actively seeking to connect with the people who provided him with the counterfeit check. He was approached by these individuals, who produced and provided the checks but who have not been charged, while walking home from his job.
4. Mr. Rucker is the caretaker for his grandfather, Kinzy Stanley, and his continued incarceration would place a hardship on the family. Despite attempts by the undersigned counsel to reach Mr. Stanley by telephone and request his presence at the hearing, he could not be reached to be notified about Mr. Rucker's original sentencing hearing.

Mr. Rucker, would respectfully request that the Court reconsider his sentence and instead sentence him to a sentence of probation, as the co-defendant received probation. In the alternative, Mr. Rucker would request that the Court fashion a sentence that would more closely mirrors the amount of jail time served by the co-defendant. Finally, Mr. Rucker would request that the Court take into consideration that the family court time cannot be run concurrently and that upon the completion of the active sentence imposed, he will have to return to the county jail to finish out his family court civil sentence.

Respectfully Submitted,



Megan S. Ehrlich  
Assistant Public Defender  
Attorney for Gary Rucker

Charleston, South Carolina

Dated: March 25, 2015

FILED  
2015 MAR 26 PM 12:50  
CLERK OF COURT  
BY MR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON  
STATE VS.

GARY LESLEY RUCKER

AKA: Gary J. Rucker  
Race: [redacted] Sex: [redacted] Age: [redacted]  
DOB: [redacted] SS#: 202 60 0480  
Address: 1016 [redacted]  
City, State, Zip: [redacted]  
DL# [redacted] SID# [redacted]

INDICTMENT/CASE#: 2014GS1006456  
A/W: 2014A1010202930  
Date of Offense: 06/04/2014  
S.C. Code §: 34-03-0110(B)  
CDR Code #: 1345

RECEIVED

SENTENCE SHEET APR 06 2015

CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Fraud Against Financial Institution  
In violation of § 34-03-0110(B) of the S.C. Code of Laws, bearing CDR Code # 1345

CONVICTED OF or

SC Court of Appeals

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Marian Louise Askins, Assistant Solicitor SC Bar # 63993  
Gary Rucker Defendant  
Miguel Ehrlich, Attorney for Defendant Ehrlich SC Bar # 75164

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 2 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: Family Court time  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine: _____	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
<b>TOTAL</b>		\$ <u>133.90</u>

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund  
Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
§47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/Deputy Clerk: Caroline Leonard  
Court Reporter: Denise Hardin  
SCCA/217 (03/2011)

Presiding Judge: DL Jesse  
Judge Bar ID: \_\_\_\_\_ Judge Code: 2118  
Sentence Date: 3/19/15

TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By: [Signature]  
DEPUTY CLERK

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1409188

ARREST WARRANT NUMBER

2014A1010202930

DATE OF ARREST

June 4, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

NOV 3 - 2014

Date: *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

GARY LESLEY RUCKER

~~DOB 1000-10-17~~

~~DATA~~

Indictment for

Bank Fraud

FILED

11/19/2014 9:02:19 AM

JULIE J. ARMSTRONG

CLERK OF COURT

ATTEST A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK OF COURT & F.C.  
By *[Signature]*  
DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

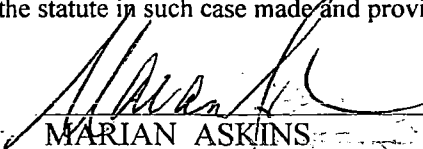
INDICTMENT

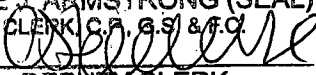
At a Court of General Sessions, convened on November 3, 2014 the Grand Jurors of Charleston County present upon their oath:

**Bank Fraud**

That in Charleston County, South Carolina, on or about June 4, 2014, the Defendant, GARY LESLEY RUCKER, did knowingly execute a scheme or artifice to defraud a federally chartered or insured financial institution or to obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representation, or promises, to wit: the defendant did attempt to cash a counterfeit check at the Ameris Bank in Charleston, S.C., in U.S. Currency; all in violation of Section 34-3-110, Code of Laws of South Carolina, (1976, as amended).

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

  
MARIAN ASKINS  
ASSISTANT SOLICITOR

ATTEST A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., S.S. & F.C.  
By   
DEPUTY CLERK

ARREST WARRANT

2014A1010202930

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

THE STATE

against

Milo Leland  
No Chrs-29465

Gary Lesley Rucker

Address:

Phone: SSN:

Sex: Race: Height: Weight:

DL State: DL #:

DOB: 10/29/1980 Agency ORI #: SC0100100

Prosecuting Agency: Charleston City Police Department

Prosecuting Officer: Officer Jackson - 0848

Offense: Banking / Federally chartered or insured financial institution crime

Offense Code: 1345

Code/Ordinance Sec: 34-03-0110(B)

This warrant is CERTIFIED FOR SERVICE in the: County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
Charleston County Judicial Center  
100 Broad Street, Suite 106  
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Personally appeared before me the affiant Officer Jackson / Hood who being duly sworn deposes and says that defendant Gary Lesley Rucker did within this county and state on or about 6/4/2014 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: Banking / Federally chartered or insured financial institution crime

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Affiant's Address 180 Lockwood Blvd.

Charleston, SC 29403-

Affiant's Telephone (843)577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/4/2014 defendant Gary Lesley Rucker

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Banking / Federally chartered or insured financial institution crime

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 6/5/2014

(L.S.)

Signature of Issuing Judge  
Linda Schwartz Lombard  
Judge Code: 7004

Judge's Address 3870 Leeds Avenue, Suite 106

North Charleston, SC 29405-7469

Judge's Telephone (843)746-9822

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)

By [Signature]  
DEPUTY CLERK

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Sgt. Steven Hood who first being duly sworn deposed and says that, Gary Lesley Rucker, did within this county and state on the June 4<sup>th</sup>, 2014 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Crimes Against a Federally Chartered or Insured Financial Institution 34-3-110

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

On June 4<sup>th</sup>, 2014 at approximately 1100 hours, while at 834 Savannah Hwy (Ameris Bank) which is located within the city and county of Charleston, SC, the defendant, Gary Lesley Rucker, did knowingly, willingly, and unlawfully, violate the SC Code of Laws 34-3-110, Crimes Against a Federally Chartered or Insured Financial Institution.

The defendant along with co-defendant, Robert L. Frazier, entered the Ameris Bank and attempted each to cash a check. The checks were drawn against the account of Ro Sham Beaux Construction. The checks were forged and counterfeited in the amounts of \$3,078 and \$1,700. The defendant and co-defendant fled the bank with the checks before the bank verified the funds with customer. Will Rogers, owner of Ro Sham Beax Construction advised that he did not issue the checks to the defendant or co-defendant and the original checks were issued to customers and possibly stolen from their mailbox. After fleeing the bank, the defendant and co-defendant were stopped by CPD Officers. Officers located other checks that were forged and counterfeited against the account of DeAntonio Law Firm on the defendants person. The defendant, in a Post Miranda Statement, admitted to attempting to cash the check at Ameris Bank and he advised that he was going to another bank to cash the check drawn against DeAntonio Law Firm.

The above is true and believable based on the investigation of Det. J. Jackson of the Charleston Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 5 DAY OF June, 2014

*Steven Hood*

AFFIANT  
180 Lockwood Blvd.  
Charleston, SC 29403  
843-577-7434

*[Signature]* (L.S.)  
SIGNATURE OF JUDGE

COMPLAINT #: 14-09188  
WARRANT#  
INVESTIGATING OFFICER: Det. James Jackson

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK C.P., G.S. & F.C.  
By *[Signature]*  
DEPUTY CLERK

CPD Form OT3