

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

MAY 28 2015

APPEAL FROM YORK COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-002193

JOHN WILLIAM DIXON, ..... Petitioner,

v.

STATE OF SOUTH CAROLINA, ..... Petitioner.

**MOTION TO DISMISS**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves to dismiss this appeal. In support of this motion, Respondent would present the following facts:

1. Petitioner filed an application for post-conviction relief on December 12, 2012. (App. p. 21). The post-conviction relief judge denied Petitioner's application, but granted him an appeal pursuant to White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). (App. p. 72). The crux of Petitioner's application, and the issue to be reviewed on appeal, involve the calculation of credit for time Petitioner served in Florida while a hold was placed on him by South Carolina probation officials. (Pet. for Writ of Cert. p. 1; Brief of Pet. p. 3).

2. Petitioner filed the Petition for Writ of Certiorari, Brief of Petitioner pursuant to White v. State, and Appendix in this matter on January 13, 2015. This Court has granted Respondent's requests for extensions of time in which to file the Return to Petition for Writ of Certiorari and Brief of Respondent. The Return is due Monday, June 1, 2015.

3. Petitioner is no longer in the custody of the South Carolina Department of Corrections. Petitioner indicated at his post-conviction relief hearing that his "max-out" date on his sentence was "September 2014." (App. p. 63, line 20). Attached to this motion and incorporated herein are the records of the Department of Corrections indicating a projected sentence completion date of September 24, 2014. A search of the Department of Corrections' "Incarcerated Inmate Search" website (<http://public.doc.state.sc.us/scdc-public/>) also shows Petitioner is no longer incarcerated. A search of the South Carolina Department of Probation, Parole, and Pardon Services' "Offender Database Search" also indicated Petitioner is not on parole for these or any other charges.

4. Respondent therefore moves this Court to dismiss this appeal as moot. "Before any action can be maintained, there must exist a justiciable controversy." Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Seabrook v. Knox, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006). "A case becomes moot when the parties no longer possess a cognizable interest in the outcome." Id. at 200, 631 S.E.2d at 912 (citing Powell v. McCormack, 395 U.S. 486, 496, 89 S. Ct. 1944, 1951 (1969)). If there is no actual controversy, this Court will not decide

moot questions. Id. (citing Jones v. Dillon–Marion Human Res. Dev. Comm’n, 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); see also Wallace v. City of York, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981); Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006).

5. Petitioner’s sole allegation was he was not being given credit for time served prior to the revocation of his probation. The ultimate remedy this Court can give him is credit for that time served, resulting is a reduction in the number of remaining days of incarceration. However, as Petitioner completed service of his sentence, such a remedy would have no practical effect. Petitioner’s release from custody prior to the filing of the Petition for Writ of Certiorari and White Brief in this case deprived the Court of a justiciable controversy to decide. Accordingly, Respondent moves to dismiss this appeal as moot.

6. Respondent further submits this issue is not capable of repetition as argued by Petitioner. (Pet. for Writ of Cert. p. 9). In Sloan v. Department of Transportation, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005), this Court noted “an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review.” This Court also noted “if a decision by a trial court may affect future events, . . . an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Id. These situations, however, are not present in Petitioner’s case.

First, it is unclear whether the unique facts in Petitioner’s case would be capable of repetition. Second, the issues in Petitioner’s appeal would not fall in the category of “evading review” because there is nothing to prevent any other inmate from filing similar actions. Furthermore, there exists a mechanism for inmates to challenge the calculation of

their time-served credit through the Administrative Procedures Act. See Al-Shabazz v. State, 338 S.C. 354, 367-68, 527 S.E.2d 742, 749 (2000). Thus, it is unnecessary for this Court to proceed with this appeal when another ripe case is capable of being filed. Finally, the post-conviction relief judge's decision in this case will not "affect future events" because of the case-specific nature of post-conviction relief and because Petitioner has served the balance of his sentence. Accordingly, Respondent submits this Court should not continue to entertain Petitioner's appeal when he no longer possesses a cognizable interest in the outcome of this litigation.

7. Pursuant to Rule 240(b), SCACR, respondent also asks that the time limits for filing and serving the Return to the Petition for Writ of Certiorari and Brief of Respondent be automatically stayed until such time as this Court has ruled on the current motion.

WHEREFORE, Respondent respectfully requests this Court dismiss this appeal as moot.

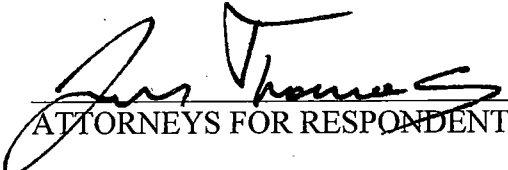
Respectfully submitted,

ALAN WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

By:

  
ATTORNEYS FOR RESPONDENT

May 28, 2015

Attachment #1

South Carolina Department of Corrections Records

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/10/13  
OMCOMITA RELEASE DATE SCREEN C051123

SCDC# > 00350805 LOC: KERSHAW  
DIXON, JOHN WILLIAM SCDC CLASSIFICATION...: NON-VIOLENT  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y  
SEXUAL PREDATOR...: NOT APP  
DNA STATUS.....: COMPLETED  
GPS REQUIREMENT...: N  
PREA DECISION.....:

CURRENT SENTENCE: 004-09-000 CONSECUTIVE SENTENCE ...: N  
004-09-000 CURRENT SENT START DATE: 04/20/2012

PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 09/24/2014 CURRENT EWC ..: 2 F 5  
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC  
INITIAL PAROLE DATE: 04/12/2013 NEXT PAROLE HEARING DATE: 04/12/2013

TOTAL GT DAYS EARNED .....: 000160 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ..: 000041 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 000263 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES  
4-© 1 Sess-1 167.7.50.33 SCDC1251 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 01/10/13

C0511

DIXON, JOHN WILLIAM FBI # [REDACTED] SID# [REDACTED] SCDC # 350805

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION .: KERSHAW CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT...: 4 YRS 9 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: SB0014T

RACE....:W SEX...:M

PROJ MAXOUT DATE: 09/24/2014

PROJ PAROLE DATE: 04/12/2013

EWC JOB...: HORTICULTURIST (GRND

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: HORTICULTURE DETAIL

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 51 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

\*\* NO PREVIOUS NUMBERS \*\*

CURRENT OFFENSES	SENTENCE				COUNTY	SENTENCE		
	YRS	MOS	DYS	START		V/NV	CATEGORY	
THREAT LIFE/FAM PUBL OFF	4	9	0	YORK	4/20/2012	N	4	

PRIOR COMMITMENTS OVER 90 DAYS:

10/31/89	*RESISTING OFFICER	0 YRS	0 MOS	365 DYS
3/11/82	*TRAFFICKING IN ILL.DRUGS	5 YRS	0 MOS	0 DYS
1/30/80	*ARMED ROBBERY	25 YRS	0 MOS	0 DYS

DETAINERS (HOLD,WANTED,NOTIFY):

AIDING PRISONER ESCAPE	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
*NO DETAINERS*			

ESCAPES:

7/12/11	OTHER ESCAPE RELATED CODE NOT IN TABLE
6/21/11	OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

\*NO NON-ASSAULTIVE DISCIPLINARY HISTORY\*

HISTORY OF MOVEMENTS:

9/ 6/12	KERSHAW	INCARCERATED	ADMINISTRATIVE
5/15/12	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
HORTICULTURIST (GRND	09/20/12	0/ 0/ 0		YF5
WARDKEEPER	09/14/12	9/19/12	INMATE REQUEST	YF5
WARDKEEPER	09/11/12	9/13/12	MI ELIGIBLE FOR LEVEL 2	YF5

HISTORY OF EARNED EDUCATION CREDITS:

SEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
*NO SCHOOL ASSIGNMENTS*			

\*\*\*\*\* END OF REPORT \*\*\*\*\*

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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA  
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APPEAL FROM York COUNTY  
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JOHN WILLIAM DIXON,

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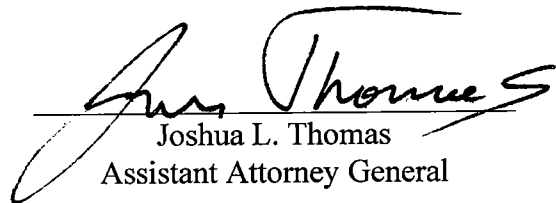
**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Motion to Dismiss** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Robert M. Dudek, Esquire**  
**SC Commission of Indigent Defense**  
**Post Office Box 11589**  
**Columbia, SC 29201**

This 28<sup>th</sup> day of May, 2015

  
Joshua L. Thomas  
Assistant Attorney General



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MAY 28 2015

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

May 28, 2015

**Via Hand Delivery**

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: John W. Dixon v. State of South Carolina**  
**Appellate Case No. 2013-002193**

Dear Mr. Shearouse:

Attached are the original and six (6) copies of the **Motion to Dismiss** in the above referenced case for filing in your office. Thank you for your attention to this matter, and please contact me if you have any questions.

Sincerely,

Joshua L. Thomas  
Assistant Attorney General  
SC Bar #100777

JLT/jlt

cc: Robert M. Dudek, Esq.