

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Edward W. Miller, Circuit Court Judge

NORMAN J. HAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-209506

A P P E N D I X

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	2004-GS-32-1203
	)	2004-GS-32-1645
THE STATE OF SOUTH CAROLINA	)	
	)	JULY 30, 2010
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
NORMAN HAYES	)	PROBATION REVOCATION
	)	HEARING
	)	
DEFENDANT.	)	

BEFORE

THE HONORABLE G. THOMAS COOPER

APPEARANCES

MARION MACK
PROBATION FIELD AGENT

Defendant appeared Pro se

Pamela Ozment-Cartee
Circuit Court Reporter

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THE STATE V NORMAL HAYES

3

1 (Whereupon, this Probation Violation Hearing was
2 called at 11:26 a.m. on Friday, July 30, 2010.)

3 **THE COURT:** Yes, ma'am.

4 **PROBATION AGENT:** Number 21, Norman Hayes, Agent Mack,
5 no attorney.

6 **WHEREUPON, NORMAN HAYES**

7 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MR. HAYES:** Yes, sir.

9 **THE COURT:** Do you have an attorney, Mr. Hayes?

10 **MR. HAYES:** Kenneth Matthews is supposed to be
11 representing me.

12 **THE COURT:** Say what?

13 **MR. HAYES:** Mr. Matthews, Kenneth Matthews.

14 **THE COURT:** You have got to give me that name again.

15 **MR. HAYES:** Kenneth Matthews.

16 **THE COURT:** Where is he?

17 **MR. HAYES:** (No response.)

18 **THE COURT:** Well, your case is up now. I don't know
19 where he is. I'm not going to go get him.

20 **MR. HAYES:** Yes, sir.

21 **THE COURT:** Are you ready to proceed?

22 **MR. HAYES:** I'd like to have my attorney present.

23 **THE COURT:** Hum?

24 **MR. HAYES:** I would like to have my attorney present
25 if possible.

THE STATE V NORMAL HAYES

4

1 **THE COURT:** Well, you had --- Has he been here
2 before?

3 **AGENT MACK:** Your Honor, if it pleases The Court. We
4 came on June 25th, and he was continued to get an attorney,
5 and here we are today.

6 I would also like to point out that the Warrant was
7 served on April 6th of this year. He came in on April the
8 7th, and after he bonded out he was told to report weekly.
9 He has never reported to the office. Even after the
10 continuance on June 25th, he never reported to the office.

11 **THE COURT:** Never reported. Never got a lawyer?

12 **AGENT MACK:** No, sir. That's correct.

13 **THE COURT:** All right. Go forward with this case.
14 We are not babysitters up here, Mr. Hayes.

15 **MR. HAYES:** Yes, sir.

16 (PAUSE)

17 **THE COURT:** Never paid anything.

18 **AGENT MACK:** That's correct.

19 **THE COURT:** Is that right?

20 **MR. HAYES:** I did pay two --

21 **THE COURT:** Huh?

22 **MR. HAYES:** I said I did give him two hundred
23 dollars.

24 **THE COURT:** You gave him two hundred dollars?

25 **MR. HAYES:** Yes, sir.

THE STATE V NORMAL HAYES

5

1 THE COURT: In 2005. Right, five years ago.

2 MR. HAYES: Yes, sir.

3 THE COURT: What does his history record look like?

4 AGENT MACK: Your Honor, he has a history of
5 housebreaking, illegal housebreaking. Housebreaking in
6 1984. Two more counts of housebreaking in 85. Criminal
7 conspiracy in 2003, along with a cocaine possession. DUS
8 from 2007. DUS again in 2008. And he currently has pending
9 charges for filing a false police report and carrying a
10 concealed weapon.

11 ORDER OF THE COURT

12 THE COURT: Revoke in full.

13 MR. HAYES: That's it?

14 AGENT MACK: Thank you, Your Honor.

15 MR. HAYES: I gotta serve my sentence?

16 THE COURT: Say what?

17 MR. HAYES: I gotta serve my sentence?

18 THE COURT: Your sentence is revoked in full, which
19 is five years. Correct?

20 MR. HAYES: What about my attorney? Cuz ah, cuz ah
21 --- my attorney.

22 THE COURT: Do what?

23 MR. HAYES: Don't I have a right to an attorney?

24 MADAME COURT REPORTER: Judge, I can't understand him.

25 THE COURT: You are talking too fast. The lady can't

THE STATE V NORMAL HAYES

6

1 understand you.

2 MR. HAYES: I said, I've been deprived of an
3 attorney, my constitutional rights.

4 THE COURT: Yes. Tell your attorney to file an
5 appeal, okay?

6 Next case.

7 (Whereupon, this hearing was concluded at 11:32
8 a.m. on Friday, July 30, 2010.)

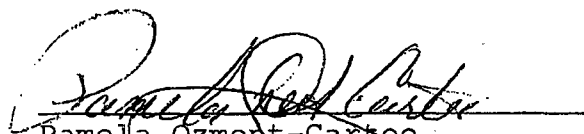
9 -- END OF TRANSCRIPT --

CERTIFICATE OF REPORTER

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of The State of South Carolina, do hereby certify, that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in The Court of General Sessions, Richland County, South Carolina, on the 30th day of July 2010.

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

September 24, 2010


Pamela Ozment-Cartee
Circuit Court Reporter

00-1-2013

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of
STATERichland
VS.

INDICTMENT#:

2004-GS-32-1203Probation C/W#s: W-40-08-2350

AKA:

Race:

B

Sex:

M

DOB:

SSN:

SID#:

00462458Name of Original Offense: Criminal ConspiracyOriginal A/W#: H-294018Date of Original Offense: 10-12-2003Conviction S.C. Code §: 16-17-410Conviction CDR Code #: 0101419Original Sentence: 5yrs SSL time served and 3yrs probation ✓

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 06/10/04 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 03-14-2008, as set forth in the attached warrant(s) or citation(s) dated 07-12-2008. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) #1, 5, 7, 9, 10 & Special Conditions

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 5 months/years the remainder of the original sentence, and/or pay \$ XTERMINATE PROBATION
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court:
convert restitution to civil judgment.
convert fine to civil judgment.

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 240 ^{Days} months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 30 day of July, 2010
Columbia, SC

Presiding Judge COOPER
Fifth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions; extend the period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this _____ day of _____

at

Columbia

SC

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 11 2011
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
W40082350

The State of South Carolina,)

vs.

Norman Hayes,)
Defendant.)

MOTION TO RECONSIDER

FILED
RICHLAND COUNTY
2010 AUG -4 AM 11:13
JEANETTE W. McBRIDE
C.F.P. & G.S.
R

TO: BEN APLIN, PPP:

YOU WILL PLEASE TAKE NOTICE that counsel will move before this Court on August 9th at 9:30 a.m. or, as soon thereafter as this matter may be heard for a Motion to Reconsider the probation revocation from July 30th, 2010.

It appears that the Defendant was arrested on or about April 2, 2010 and charged with Probation Violation. Defendant appeared before the Honorable G. Thomas Cooper on July 30, 2010, without an attorney and was revoked 5 years on the above referenced probation violation. The Public Defender's Office was contacted by the above named Defendant's family in reference to this case.

The Defendant, Norman Hayes, is incarcerated in the South Carolina Department of Corrections.. This notice is also a formal request for the Department of Pardon Probation and Parole to have the above-named Defendant transported to the Richland County Judicial Center from the South Carolina Department of Corrections.


James Hunter May
Assistant Public Defender


E. Fielding Pringle
Chief Public Defender of Richland County

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 4th day of August, 2010

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	04-GS-32-012031
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
NORMAN HAYES,	)	
	)	
DEFENDANT,	)	

February 4, 2011
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

APPEARANCES:

BENJAMIN APLIN, ESQ.
Attorney for the State

JAMES MAY, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

WITNESSES

(There were no witnesses called.)

EXHIBITS

(There were no exhibits introduced.)

1 MR. MAY: Your Honor, this was filed back in August.

2 THE COURT: Do you have a copy?

3 MR. MAY: If I could just give you a brief background
4 of the whole confusion. Back in August, Mr. Hayes
5 appeared before you. He stated that he was represented
6 by Ken Matthews at the time.

7 Mr. Matthews was contacted. He did not represent
8 Mr. Hayes. Mr. Hayes, per my office, stated that he wished
9 to have an attorney appointed to him. I believe he did
10 appear numerous times without an attorney for a probation
11 revocation.

12 THE COURT: A probation revocation?

13 MR. MAY: Yes, sir.

14 You went ahead and heard his motion -- you went
15 ahead and heard the revocation, and you sentenced him to
16 five years.

17 The next Monday, I was the duty attorney for the
18 Public Defender's Office, and his family contacted me.
19 I talked to Ms. Pringle in our office. She said to file
20 a motion asking for appointment, as well as a motion to
21 reconsider.

22 I -- we are appointed to Mr. Hayes' case, I did that,
23 and just because of schedules with Your Honor, Mr. Aplin,
24 as well as myself, it has not been able to go forward.

25 The motion was filed it in the clerk's office, as

1 well as on Mr. Aplin.

2 THE COURT: Within ten days?

3 MR. MAY: Yes, sir. It was filed Monday following
4 the hearing, and I will be happy to try to find it. The
5 reason why I don't have it is because we do not have an
6 open file for Mr. Hayes in our office.

7 THE COURT: But you filed a motion.

8 MR. MAY: Yes, sir, I agree.

9 THE COURT: What did you do with it?

10 MR. MAY: To be honest, I don't know where it went
11 once it was filed, but Mr. Aplin and I have been --

12 THE COURT: Does it say anything other than to
13 reconsider?

14 MR. MAY: It was first it was to appoint.

15 THE COURT: I understand.

16 MR. MAY: And we'd ask that you appoint us.

17 THE COURT: I understand.

18 MR. MAY: And then it was just to reconsider.

19 THE COURT: Were there grounds --

20 MR. MAY: No, sir.

21 THE COURT: -- stated in the motion?

22 MR. MAY: No, sir. There were not.

23 THE COURT: Okay.

24 MR. MAY: And I haven't spoken with Mr. Hayes,
25 because I didn't want to violate the Professional Rules

1 of Conduct of soliciting business until we are
2 appointed.

3 THE COURT: Mr. Hayes, do you want a Public Defender
4 to represent you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I appoint the Public Defender.

7 MR. MAY: All right. I'd ask just for five minutes,
8 and then we could -- I'll be happy to go forward on this
9 motion.

10 THE COURT: You never talked to him?

11 MR. MAY: I didn't want to be violative of the rules
12 of --

13 THE COURT: Just yes or no.

14 MR. MAY: No.

15 THE COURT: All right.

16 (Other cases were heard, and then the following was
17 placed on the record.)

18 THE COURT: All right. Mr. May.

19 MR. MAY: Yes, sir, Your Honor. May it please the
20 Court, Your Honor. I would ask you to reconsider your
21 August decision of five years for Mr. Hayes.

22 After reviewing his sheet with Mr. Hayes, it
23 appears that the number one issue was the failure to pay
24 monetary obligations. He --

25 THE COURT: How about the absconding?

1 MR. MAY: Yes, sir, he reported for three years, just
2 from my reading of his report. He reported for three
3 years. Then he was exempted for six months by Judge Childs
4 to help him, give him more time, so he could pay off the
5 fine and fees.

6 At that point, he absconded. That is clearly a
7 violation, but he did do three years on the front end.
8 The reason why it was continued or extended in time by
9 Judge Childs was to pay off the monetary obligations.

10 Today, they have \$340 to pay towards his monetary
11 obligations. While that does not completely eliminate
12 all monetary obligations, that would knock out the
13 rest of the restitution, as well as it would help cut
14 into some of the Court fines and fees. His wife says they
15 can easily pay within 90 days.

16 I don't know, he has been incarcerated since August.
17 I would ask you to reconsider it, allow him to pay the
18 money. Your Honor, I would even ask if you would be
19 willing to extend for 90 days, to allow him to pay it
20 off. If not, you retain jurisdiction.

21 That way, he can -- that way he knows what's going
22 to happen if he doesn't pay off the rest of the money.
23 This does appear to maybe be a steak and spear issue as
24 far as the money goes.

25 I'd ask just to have the opportunity to see if he

1 can pay it. He makes a representation to me, as well as
2 his wife does, that they can pay this off. I do have \$340
3 to pay towards his fines and fees.

4 THE COURT: Yes, sir.

5 MR. APLIN: I don't know, just for what it's worth,
6 I gave Mr. May copies of the notices of the prior
7 hearings. I know one of the issues was that Mr. Hayes
8 was here without an attorney the last time.

9 I know Mr. May is here representing him now on this
10 motion. Just to be clear that he was given many
11 notices that he either needed to apply for a public
12 defender or apply for an attorney and was very well aware
13 of --

14 THE COURT: Did he come to the revocation hearings
15 without an attorney?

16 MR. APLIN: He came to a revocation hearing on
17 June 25th, 2010, without an attorney and was given more
18 time.

19 His case would be scheduled, and he was directed to
20 attempt to contact an attorney and then was given
21 another notice of a hearing, came back July 30th, again
22 without an attorney. That was when it was in front of
23 Your Honor. That's when you decided to go ahead and have
24 the hearing.

25 THE COURT: He would have been given notice then,

1 plenty of opportunity?

2 MR. APLIN: That's right. I just wanted to make that
3 clear. As far as the request to bring the money, I just
4 wanted to let Your Honor know that at the time you revoked
5 him, you did impose civil judgments for the balances of
6 all the money. The department can still collect and
7 distribute the money to the victim, obviously, but just
8 wanted to make you aware of it.

9 THE COURT: Right. Well, the restitution was only
10 two -- \$300 to start with.

11 MR. APLIN: Right.

12 THE COURT: He paid 220 of it.

13 MR. APLIN: Exactly, and I think that if we did a civil
14 judgment for the balance, whatever the \$80.

15 THE COURT: All right. So the money was not the
16 primary concern at that point.

17 MR. APLIN: Correct.

18 THE COURT: What was his history?

19 MR. APLIN: And, Your Honor, Agent Mack can address
20 a little bit of that with you.

21 THE COURT: Yes. Kind of run me back through it.

22 PROBATION AGENT: Well, basically, he absconded
23 supervision from 2008 up until we served process on him
24 on April 2010.

25 I mean, I just stated in my -- at an earlier hearing,

1 he had already been on probation three previous times,
2 so he's no stranger to how this thing goes and --

3 THE COURT: How -- had he successfully completed
4 those probation periods?

5 PROBATION AGENT: Yes, sir.

6 THE COURT: He had? He has never --

7 PROBATION AGENT: Has he ever successfully
8 completed?

9 THE COURT: Never been revoked?

10 PROBATION AGENT: I -- I don't have that information
11 in front of me, Your Honor.

12 THE COURT: We know he's been on probation three
13 times before.

14 Where is your computer?

15 PROBATION AGENT: I can -- I can find out if he's ever
16 been revoked.

17 THE COURT: If he's been on probation three times
18 before and he's been revoked on all three, then it makes
19 a lot of sense as to why I revoked him in full.

20 If he successfully completed all three, I might have
21 a different attitude.

22 PROBATION AGENT: We have someone going to find that
23 out. Beg the Court's indulgence.

24 THE COURT: What else? What's his criminal history?

25 PROBATION AGENT: If you would, Your Honor, I don't

1 have his rap sheet on me.

2 MR. APLIN: Your Honor, part of reason we don't have
3 some of that information in the file is Mr. Hayes pro se
4 tried to file a Notice of Appeal, as well. The case
5 went -- it's in front of the Court of Appeals, but a motion
6 to reconsider was filed --

7 THE COURT: Prior --

8 MR. APLIN: At the same time prior, but our process,
9 when the appeal is filed in the county offices, they
10 purge the file. So a lot of the rap sheet and things like
11 that, we do not have in the file right now, because they
12 assume that there was an appeal.

13 THE COURT: There was an appeal?

14 MR. MAY: The first -- when Mr. Aplin gave me his
15 application for appeal was the first time I knew of that,
16 today.

17 I'm assuming the revocation --

18 MR. APLIN: Right. He just filed a notice of appeal
19 from the revocation that you imposed.

20 THE COURT: Okay.

21 MR. APLIN: No grounds have been alleged yet or
22 anything.

23 THE COURT: Okay.

24 MR. APLIN: Because there's no --

25 THE COURT: I may not have jurisdiction.

1 MR. APLIN: Well, he also filed a motion to
2 reconsider, so that should stay the appeal from
3 occurring, I think is my understanding of the law.

4 MR. MAY: That would be my understanding, as well,
5 Your Honor.

6 THE COURT: You filed it first?

7 MR. MAY: I...

8 MR. APLIN: I don't know the date it was filed. Notes
9 was filed with the county office, and then I got -- the
10 first I heard about it was from the Attorney General's
11 office.

12 THE COURT: You agree you filed the Notice of Appeal
13 first? We lost jurisdiction.

14 MR. APLIN: I believe that's correct.

15 MR. MAY: I know what you're saying. I do not know
16 the dates. As I said, we were not appointed. We -- I
17 know that on Monday following his revocation from the
18 previous Friday, he was -- was one of the motion to appoint,
19 as well as motion to reconsider was filed.

20 It's my understanding from Alvin S. Glenn, they do
21 not transport people to D.O.C. until Tuesdays and
22 Thursdays. So I do not think you could have filed
23 this -- I don't think he could have filled it out and filed
24 it from Alvin S. Glenn for the Notice of Appeal.

25 THE COURT: What do you have there?

1 MR. MAY: This is the Notice of Appeal Mr. Aplin gave
2 to me.

3 THE COURT: Okay.

4 MR. MAY: But there is no date on that.

5 MR. APLIN: Actually, that's not --

6 MR. MAY: I'm sorry --

7 MR. APLIN: That's not the Notice of Appeal, but the
8 way these things work is we hear about it from the
9 Attorney General's Office.

10 THE COURT: Okay.

11 MR. APLIN: So that's where we -- it had been served.
12 I don't have a copy of the actual notice.

13 THE COURT: All right.

14 MR. APLIN: I don't know the date it was filed but...

15 THE COURT: You really don't -- why do they call
16 general counsel in on a motion to reconsider?

17 MR. MAY: Because I was told to by Ms. Pringle to get
18 in touch with Mr. Aplin.

19 THE COURT: Okay.

20 MR. MAY: Regarding a motion for appointment.

21 THE COURT: All right. All right. You're now
22 appointed.

23 MR. MAY: Yes, sir. Now, for the reconsideration --

24 THE COURT: Where is he housed? Where does he live?

25 THE DEFENDANT: Allendale Corrections.

1 THE COURT: Allendale. I just need a little more
2 information, but I don't -- I don't need the legal
3 department to --

4 MR. APLIN: I understand, Your Honor.

5 THE COURT: -- to reconsider unless the -- you
6 might have some late breaking news.

7 PROBATION AGENT: Your Honor, out of the three
8 previous probations, he has one revocation.

9 THE COURT: When was that?

10 PROBATION AGENT: It was actually the second
11 probation case he was under.

12 THE COURT: What year?

13 PROBATION AGENT: '88.

14 THE COURT: '88.

15 PROBATION AGENT: He has an '88 case, an '85 case and
16 a 2004 case.

17 THE COURT: The 2004 was successful, obviously.

18 PROBATION AGENT: And he's also, Your Honor, been on
19 federal probation, as well.

20 THE COURT: Not now?

21 PROBATION AGENT: No not.

22 THE COURT: You're not currently on probation are
23 you?

24 THE DEFENDANT: No, sir.

25 THE COURT: And what does this form 9 say?

1 PROBATION AGENT: Convert restitution to civil
2 judgment and revoke the five years.

3 THE COURT: Five years?

4 PROBATION AGENT: Yes, sir.

5 THE COURT: Okay. All right. I'll amend it, reduce
6 it to a three-year revocation.

7 MR. MAY: Thank you very much, Your Honor.

8 THE COURT: Now, only in the event that he didn't
9 file the appeal first, in which case, we'll find we've
10 got no jurisdiction anyway.

11 MR. MAY: Yes, yes, sir, Your Honor.

12 THE COURT: All right.

13 MR. APLIN: Your Honor, I will check the date. I'll
14 talk to the Attorney General's Office, find out exactly
15 the date that that notes was filed.

16 THE COURT: He needs to talk to a lawyer before he
17 goes filing things.

18 MR. MAY: Yes, sir. Thank you very much, Your Honor.

19 MR. APLIN: Thank you.

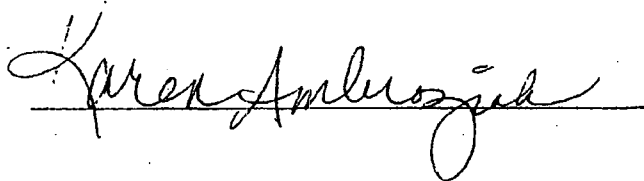
20 (Whereupon, the proceedings were concluded.)
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th 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 had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Richland County, South Carolina, on the 4th day of February, 2011.

May 23, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", is written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA

County of Richland
STATE VS

AKA _____
Race B Sex M
DOB [REDACTED]
SSN [REDACTED]
SID# 00462456

UNPAID

IN THE COURT OF GENERAL SESSIONS

INDICTMENT# 2229 GS 32 1203
Probation C/W#s: W-40-08-255
Name of Original Offense General Criminal
Original A/W# H-5406
Date of Original Offense 10-11-2002
Conviction S.C. Code 16-117-40
Conviction CDR Code 0-10-0-9-1-1
Original Sentence 5 yrs 5 m in state prison followed by

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 06/12/03 in the Court of General Sessions of Richland County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 06/12/03. After hearing the evidence and being duly advised in the presence of [REDACTED], the undersigned Court finds that the named defendant has violated the following condition(s) of probation: It is hereby ordered that the defendant shall comply with the following:

- Therefore, IT IS ORDERED that:
- ☒ the suspended sentence be revoked and the above named defendant be required to serve 3 months of the original sentence, and/or pay \$10,000 FINE
 - ☐ the suspended sentence be revoked and the above named defendant be required to serve 3 months of the original sentence and/or pay \$; the suspension to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
 - ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth herein and not inconsistent with this order.
 - ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
 - ☐ the above named defendant is placed on active electronic monitoring pursuant to S.C.A. 13-6-54 (mandatory if convicted of a degree criminal sexual conduct with a minor or lewd and lascivious if convicted of any other applicable sex offense against a minor).

Additional Conditions ordered by the Court are:
CONVICTION RE-ENTRY TO KING TO CIVIL JUDGMENTS

ENTERED ON: 2-9-11
BY: [Signature]

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 247 months on this sentence.
(Prior sentence time and/or pre-arrest detention time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to S.C.A. 13-6-54.

This 4 day of FEBRUARY 2011
Columbia SC
Presiding Judge [Signature]
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation impose any new conditions it deems proper when your period of probation is to exceed five (5) years. At any time within the period of your probation the Court may require you to serve any part of the original sentence imposed. This is to certify that I have read or have had read to me the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed By _____

Signed this _____ day of _____ 2011 at _____ SC

329

STATE OF SOUTH CAROLINA

County of Richland
STATE VSAKA Norman J. Hays
Race B Sex M
DOB [REDACTED]
SSN [REDACTED]
SID# 0044498

ANNEXED

SCDC

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#

2004 GS 32-1445
Probation CWR#s W-40-28-110Name of Original Offense Parole and Probation
Original AWR# W-40-28-110
Date of Original Offense 10-1-03
Conviction S.C. Code # 44-53-375
Conviction CDR Code # 2-1-1-0-1-3
Original Sentence See SCDC Case File

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/10/24 in the Court of General Sessions of Richland County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 07-12-2004. After hearing the evidence and being duly advised in the presence of the defendant, the Court finds that the above named defendant has violated the following condition(s) of probation: Failure to comply with the conditions of probation as provided in the attached order and not inconsistent with this order.

Therefore, IT IS ORDERED that:

- ☒ The suspended sentence be revoked and the above named defendant be required to serve 3 months/years of the original sentence, and/or pay \$5,000.00 FINE thereupon to be reinstated on probation subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ The suspended sentence be revoked and the above named defendant be required to serve months/years of the original sentence and/or pay thereupon to be reinstated on probation subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ The above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ Probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ The above named defendant is placed on active electronic monitoring pursuant to S.C. Code Ann. § 23-5-540 (mandatory if convicted of first degree sexual offense or conduct with a minor or sexual offense if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:CONFINEMENT TO CIVIL JUDGMENTENTERED BY [Signature]
BY [Signature]☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation for and applied by the SC Department of Corrections.☒ The defendant has previously served 203 months/years on this sentence.
(split sentence time and/or prior partial revocation time)☐ The defendant was previously placed on active electronic monitoring pursuant to § 23-5-540.This 4 day of FEBRUARY, 2011
Columbia, SCPresiding Judge [Signature]
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation, impose any lawful conditions it deems proper, or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this day of , 2011 at Columbia, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN HAYES,

APPELLANT

INITIAL BRIEF OF APPELLANT

TRISTAN M. SHAFFER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the Circuit Court deny Appellant's right to counsel when Appellant's attorney was not present at the probation revocation hearing, but the Circuit Court failed to continue his case or appoint new counsel?

STATEMENT OF THE CASE

On June 10, 2004, Appellant pled guilty to criminal conspiracy and possession of crack cocaine in front of the Honorable Casey Manning. R* (Sentencing Sheets). Appellant was represented by Kenneth Matthews. R* (Sentencing Sheets). Appellant was sentenced to five years with credit for time served and the balance was suspended upon three years probation. R* (Sentencing Sheets).

On September 12, 2008, Appellant was served with a probation warrant. A probation violation hearing was heard on July 30, 2010 before the Honorable G. Thomas Cooper. Tr. 1. The State was represented by Agent Marion Mack. Tr. 1. Appellant was not represented by counsel. At the conclusion of the hearing the Circuit Court found that Appellant violated his probation and revoked the balance of his five year sentence. R* (Probation Sentencing Sheet). This appeal follows.

ARGUMENT

The Circuit Court denied Appellant's right to counsel when Appellant's attorney was not present at the probation revocation hearing, but the Circuit Court failed to continue his case or appoint new counsel.

Relevant Facts

At the start of Appellant's probation revocation hearing, Agent Mack told the court that Appellant was not represented by counsel. Tr. 3, ll. 4-5. Appellant then informed the court that Kenneth Matthews was supposed to be representing him. Tr. 3, ll. 10-11. Inexplicably, Mr. Matthews was not present during the probation hearing. When Appellant was asked if he wanted to proceed without his attorney present, he told the court that he would prefer to have his attorney present. Tr. 3, ll. 21-25. Mack then informed the court that Appellant's case had been continued previously so he could get an attorney, and Mack alleged that Appellant did not report or obtain an attorney. Tr. 4, ll. 3-10. The court then informed Appellant that "we are not babysitters up here" and proceeded with the probation revocation hearing. Tr. 4, ll. 13-14. The court then revoked Appellant's probation in full. Tr. 5, l. 12. Appellant objected, stating:

"[Appellant]: I said I've been deprived of an attorney, my constitutional rights.

Court: Yes. Tell your attorney to file an appeal, okay? Next case." (Tr. 6, ll. 2-6).

Argument

In South Carolina, all persons charged with a probation violation have the right to counsel. *Turner v. State*, 384 S.C. 451, 454, 682 S.E.2d 792, 793 (2009); *Rule 602(a)*, S.C.A.C.R. In addition to statutory requirements giving probationers the right to counsel,

probationers might also have a federal constitutional right to counsel. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790, 93 S.Ct. 1756 (1973).

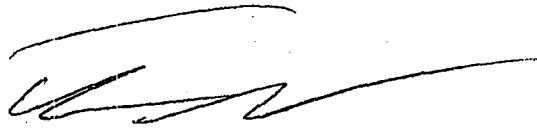
A defendant may waive his right to counsel through his conduct. *State v. Boykin* 324 S.C. 552, 556, 478 S.E.2d 689, 691 (S.C. App 1996) (citing *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d Cir. 1995)). However, in order for there to be waiver by conduct, a defendant must first be warned of the consequences of his actions. *See id.* (citing *United States v. Meeks*, 987 F.2d 575 (9th Cir. 1993)).

Appellant requested counsel to be present during his probation revocation hearing. Tr. 3, ll. 24-25. Appellant also informed the court of the name of an attorney that was supposed to be representing him. Tr. 2, ll. 10-11. However, the court decided to proceed forward with the case despite the fact that Appellant was not represented by counsel. Tr. 4, ll. 13-14. Also, the court never offered to appoint him other counsel. There is nothing in the record to indicate that Appellant's conduct was so egregious as to permanently deprive him of counsel. *See Boykin, Supra*, 324 S.C. at 558, 478 S.E.2d at 692. Appellant was therefore denied his right to counsel.

CONCLUSION

This Court should reverse the circuit court and remand the case for a new probation revocation hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tristan M. Shaffer', is written over a horizontal line.

Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT.

This 7th day of February, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland CountyG. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN HAYES,

APPELLANT

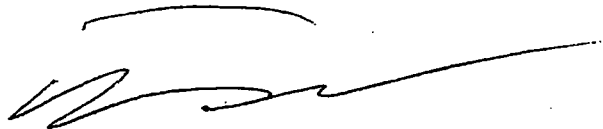
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Sentencing Sheets
- (3) Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

February 7th, 2011



Tristan M. Shaffer
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

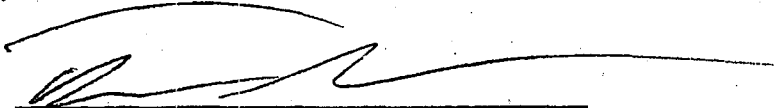
V.

NORMAN HAYES,

APPELLANT

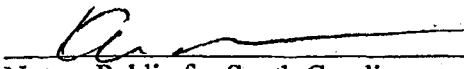
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 7th day of February, 2011.


Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of February, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

The South Carolina Court of Appeals

The State,

Respondent

v.

Norman Hayes,

Appellant.

The Honorable Thomas W. Cooper, Jr.
Richland County
Trial Court Case No. 2004-GS-32-01203
2004-GS-32-01645

ORDER

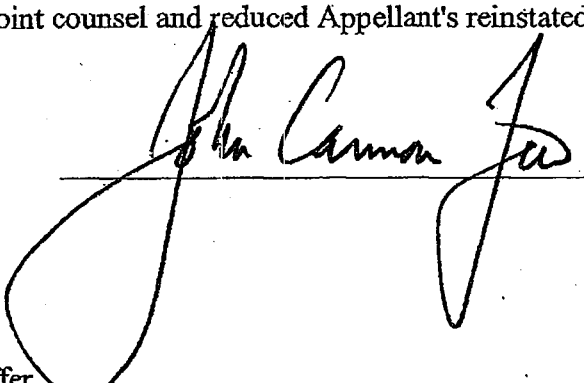
On August 9, 2010, Appellant served and filed a pro se notice of appeal from the circuit court's order filed July 30, 2010, which revoked Appellant's probation and reinstated his suspended sentence. Appellant's issue on appeal, as set forth in his initial brief, is whether "the circuit court denied Appellant's right to counsel when Appellant's attorney was not present at the probation revocation hearing, but the circuit court failed to continue his case or appoint new counsel."

Respondent has now filed a motion to dismiss this appeal as premature. Respondent explains that on August 4, 2010, before Appellant served his notice of appeal, a public defender filed a motion to be appointed as counsel and a motion to reconsider Appellant's probation revocation in the circuit court. Respondent further explains that on February 4, 2011, the circuit court held a hearing and granted both motions. On February 7, 2011, the circuit court issued an amended order reducing Appellant's reinstated sentence. Appellant did not file a notice of appeal from the amended order.

Appellant's appellate counsel filed a return to Respondent's motion to dismiss. Counsel states he was never informed of the motion to appoint or the motion to reconsider. He adds that "[d]espite his sentence being reduced, Appellant still wishes to exercise his right to appeal."

After a careful consideration, we dismiss Appellant's appeal. We note that Appellant appealed from the trial court's July 30, 2010 order, which has now been amended. Furthermore, Appellant's issue on appeal, whether his right to counsel was violated, is moot because the trial court granted Appellant's motion to appoint counsel and reduced Appellant's reinstated sentence.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John Cannon", is written over a horizontal line. The signature is stylized with a large loop at the end.

Columbia, South Carolina

cc: Appellate Defender Tristan Shaffer
Norman Hayes #127361
Ben Aplin, Esquire

FILED

A handwritten signature and the date "8/1" are written over the "FILED" stamp.

ORIGINAL

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

SEP 27

IN THE COURT OF COMMON PLEAS

NORMAN JAMES HAYES ^{SC06} 12736 THA. DARRIGG
 Full name and prison number (if any) of Applicant CLERK OF COURT
LEXINGTON SC

AM

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2011 CP 3203630

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make chr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay threes and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE COUNTY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-32-1645 POSSESSION OF CRACK
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 04, 2011
 - (b) 3 YEARS WITH CREDIT FOR 240 DAYS

A TRUE COPY
 REC'D
 LEX. CO. CLERK OF C.P., D.S. & H.Q.
 SEP 27 2011

- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NON-APPLICABLE
- ii. NON-APPLICABLE
- iii. NON-APPLICABLE
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. NON-APPLICABLE
- iii. _____
- (c) the date of each such result:
- i. NON-APPLICABLE
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NON-APPLICABLE
- ii. NON-APPLICABLE
- iii. NONE-APPLICABLE
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NEW AND DISCOVERED EVIDENCE THAT
- (b) I AM BEING HELD WITHIN THE SOUTH
- (c) CAROLINA DEPARTMENT OF CORRECTIONS ILLEGALLY.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I SHOULD HAVE BEEN RELEASED 5 MONTHS
AGO

- (a) ON 3YR'S. I WOULD MAX-OUT IN 18 MONTHS.
 (b) THE SOUTH CAROLINA DEPT. OF CORRECTIONS HAS
 (c) ME, MAXING OUT IN 26 MONTHS.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) I SHOULD HAVE MAX-OUT IN MAY 2011, RE-
 (b) LEASED ON 3YR SENTENCE WITH PROPER CAL-
 (c) CULATION AND APPLICATION OF COURT ORDERED 240 DAYS
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. THE ADMINISTRATIVE LAW COURT, IN AN
 ii. ATTEMPT TO SECURE COURT ORDERED 240
 iii. DAY CREDITS
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. THE ADMINISTRATIVE LAW COURT
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. NON-APPLICABLE
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. August 11, 2011
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NON-APPLICABLE
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. SCDC REFUSES TO APPLY 240 COURT ORDERED
- ii. DAYS TO 3 YEAR SENTENCE THUS REQUIRING
- iii. ME TO SERVE TIME ON A SENTENCE ALREADY SATISFIED

(b) the proceedings in which each ground was raised:

- i. THE SOUTH CAROLINA DEPT. OF CORRECTIONS
- ii. THE ADMINISTRATIVE LAW COURT
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) NON-APPLICABLE
- (b) NON-APPLICABLE
- (c) NON-APPLICABLE

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? No
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. JIM MAY, RICHMOND COUNTY PUBLIC
- ii. DEFENDERS OFFICE
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. ARRAIGNMENT AND SENTENCING
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

IMMEDIATE RELEASE WITH COMPENSATORY DAMAGES

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of

VERIFICATION

ORIGINAL

2011CP3203630

I, Norman Hayes, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 26
day of Sept., 2011
ABraham Dunn (L.S.)
Notary Public

My Commission Expires: 5/6/14

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

2011 SEP 27 P 1:31

FILED

ORIGINAL

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, N.H., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

2011 CP 3203630

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Norman Hayes
Applicant

SWORN or affirmed to and subscribed before me this
26 day of Sept, 2011
[Signature]
Notary Public

My Commission Expires: 5767

RETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

2011 SEP 27 P 1:31

FILED

NORMAN HAYES
127361 SCDC
FLORENCE SOUTH #2108
990 WISSEKY HWY.
BISHOPVILLE, S.C.
29010

FILED



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2011 CP 3203630

2011 SEP 27 P 1:30
JUDITH A. CARRISON
CLERK OF COURT
LEXINGTON SC

LEXINGTON COUNTY CLERK
of COURT
139 E. MAIN ST. Rm. 107

LEGAL MAIL ONLY

2907234126

LEXINGTON, SOUTH CAROLINA

29072-3456

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF LEXINGTON

IN THE CIVIL COURT

5 NORMAN J. HAYES,)

6 Applicant,)

7 -vs-)

8 STATE OF SOUTH CAROLINA,)

9 Respondent.)

TRANSCRIPT OF RECORD

11-CP-32-03630

11 November 30, 2011
 12 Lexington, South Carolina

14 B E F O R E:

15 HONORABLE EDWARD W. MILLER, Judge.

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

19 TRISTAN M SHAFFER, Esquire
 20 Attorney for the Applicant

21 JOHN BENJAMIN APLIN, Esquire
 22 KAELOE E. MAY, Asst. Attorney General
 23 Attorneys for the State

24 L. COCONUT PANTSARI, R.P.R.
 25 Circuit Court Reporter

INDEX OF WITNESSES

WITNESSES:

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NORMAN JAMES HAYES

Direct By Mr. Shaffer 44

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INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 November 30, 2011.)

3 THE COURT: Yes, ma'am, Ms. May.

4 MS. MAY: Your Honor, the final case for
5 today is Norman Hayes versus State, Case
6 Number 2011-CP-32-3630. I apologize. This was an
7 expedited case and that is the stack of papers that were
8 not in that brown envelope.

9 THE COURT: That's very distressing, a brown
10 envelope.

11 MS. MAY: I will let Mr. Shaffer introduce the
12 case.

13 THE COURT: Okay.

14 MR. SHAFFER: Your Honor, this case originally
15 was Mr. Hayes pled to possession of crack cocaine and
16 criminal conspiracy back in 2004, I believe it was.

17 THE COURT: Okay.

18 MR. SHAFFER: He was put on probation and
19 continued on probation for a while for non-payment.
20 They ended up violating his probation.

21 In July of last year, he went in front of
22 Judge Cooper over in Richland County. He was
23 unrepresented at the time, and they revoked in full. He
24 had five years suspended on three years probation was
25 the original sentence.

1 THE COURT: Okay.

2 MR. SHAFFER: They revoked in full in July.
3 He filed a notice of appeal ten days later. Unknown to
4 me there was also a motion to reconsider filed by the
5 Richland County Public Defender's Office four days
6 later.

7 So at the time I was at Appellate Defense, I
8 had his case. We filed an appeal on it. We actually
9 briefed the case. Then in February of this year, Judge
10 Cooper -- he went in front of Judge Cooper -- who
11 granted the motion to reconsider, reduced it to three
12 years, and then terminated his probation.

13 THE COURT: Okay.

14 MR. SHAFFER: He then --

15 THE COURT: When did that happen?

16 MR. SHAFFER: I apologize, Your Honor.

17 THE COURT: When did that happen?

18 MR. SHAFFER: February 4th of this year.

19 THE COURT: All right. Go ahead.

20 MR. SHAFFER: The appeal was dismissed on a
21 motion from the State, and I forgot the exact month that
22 that occurred in. The appeal was later dismissed, and
23 Mr. Hayes filed for a P.C.R. after that.

24 We have one issue in the case, and I believe
25 it in his -- I wasn't there whenever he filled out the

1 application. I believe it's the proper one. It's
2 basically that the sentence has now expired.

3 The issue in the case is whether or not the
4 Department of Corrections correctly did not add the 240
5 days of pretrial detention being served prior to
6 pleading to his three-year sentence.

7 THE COURT: Okay.

8 MR. SHAFFER: I believe we have only have one
9 witness, Michael Stobbe, from the Department of
10 Corrections.

11 THE COURT: Okay. Come on around.

12 MICHAEL JOHN STOBBE, being
13 first duly sworn, testified as follows:

14 CLERK: State your full name for us.

15 THE WITNESS: Michael John Stobbe,
16 S-T-O-B-B-E.

17 **DIRECT EXAMINATION**

18 BY MR. SHAFFER:

19 Q Mr. Stobbe, where do you work?

20 A The South Carolina Department of Corrections.

21 Q And what is your position there?

22 A I'm the branch chief of release and records
23 management.

24 Q So what do you exactly do? What does that job
25 entail?

1 A Attempting to assure that all sentencing sheets are
2 entered correctly, assuring that the inmates are
3 released on time and not before their due-out,
4 being subpoenaed to court, much as we are today,
5 and being the custodian of the records for the
6 Department of Corrections.

7 Q Okay. And are you familiar with the records of
8 Norman Hayes?

9 A Yes.

10 Q What was Norman Hayes' original sentence?

11 A Five years, suspended on time served, and three
12 years probation.

13 Q And how many days of pretrial detention was that
14 time served?

15 A According to the Form 9, 240.

16 Q On July 30th what happened? July 30 of last year,
17 I apologize.

18 A July 30th of 2010 his probation was revoked, and he
19 was ordered to serve five years of the remaining
20 original sentence. Of course, the original
21 sentence was five years.

22 Q Okay.

23 A So the Department of Corrections subtracted the 240
24 days that the document that was signed and dated by
25 the judge indicated that he had 240 days of jail

1 time.

2 That 240 days was subtracted from five years,
3 which gave him a total sentence of four years and
4 125 days and an incarcerative sentence of four
5 years and 125 days.

6 Q That's not concerning the good time or anything
7 like that; correct?

8 A Sentencing sheets just deal with how much time he
9 has to satisfy.

10 Q Okay. What would happen at the end of that five
11 years when probation -- or according to the
12 sentencing sheet, what would happen?

13 A Once he satisfied the five years, his probation was
14 terminated.

15 Q And then something changed in his sentence on
16 February 4th of this year; right?

17 A Yes, sir. I do not know why, but his total
18 sentence -- excuse me -- his incarcerative sentence
19 of four years and 125 days was reduced to three
20 years.

21 Q And then what would happen at the end of that
22 sentence according to the Form 9?

23 A Once he satisfied the three years, his probation
24 was terminated.

25 Q And he is currently serving that sentence of three

1 years; is that correct?

2 A Correct.

3 Q Does S.C.D.C. on a partial revocation, something
4 less than the full revocation, do they give credit
5 for pretrial detention?

6 A The Department of Corrections gives, on any
7 sentence we receive, gives them credit for pretrial
8 jail time. I think the statute is 24-13-240, but I
9 wouldn't want to be held to that.

10 Q So did he receive pretrial jail time on the
11 February 4th sentence, the three-year sentence?

12 A Yes, sir, the 240 days was applied to his total
13 sentence. In other words, five years minus the 240
14 days, which would give him a total sentence of 4
15 years and 125 days.

16 Q Was it applied to the three-year sentence that was
17 modified on February 4th?

18 A Yes, sir. The 240 days was applied to the
19 remainder of the original five-year sentence.

20 Q But it wasn't credited toward the three years that
21 he was actually serving; is that right?

22 A Well, you have a total sentence and an
23 incarcerative sentence. Two hundred forty days,
24 with a command of the English language, couldn't be
25 reduced -- could not reduce the three years. So

1 the 240 days reduced his total sentence from five
2 years to four years and 125 days. The 240 days was
3 not subtracted from the three years, no, sir.

4 Q But it was subtracted from the five years that he
5 was no longer serving?

6 A No. As far as I know, on the Form 9 on both
7 February 4, 2011, and July 30, 2010, the remainder
8 of the original sentence on the Form 9 was never
9 marked out. So he is still held responsible for
10 the total sentence of five years minus the 240
11 days. That's what his parole date is based on.

12 Q So what part are you saying was not marked out that
13 should have been marked out?

14 A I'm not saying it should have been marked out. I
15 am not saying it was not.

16 Q I apologize. What exact part or which box are
17 you --

18 A Box one immediately after where it says five years,
19 it says the remainder of the original sentence.
20 That wasn't marked out. So he still has the
21 remainder of his original sentence hanging over his
22 head for his parole eligibility date. That's
23 discussed on page 675 and 676 of the South Carolina
24 statute, Code 21 through 24.

25 MR. SHAFFER: Your Honor, may I approach?

1 THE COURT: Yes.

2 MR. SHAFFER: Your Honor, may I have this
3 marked?

4 THE COURT: What is it?

5 MR. SHAFFER: Applicant's 1 and 2. They are
6 the sentencing sheets. I believe they are in the court
7 file already.

8 MS. MAY: They are part of the record.

9 THE COURT: They are in the Court's file?
10 Okay. Go ahead.

11 BY MR. SHAFFER:

12 Q If you don't mind pointing out to me exactly where
13 you are talking about would have given him credit?

14 A Well, that's not what I said.

15 Q Okay.

16 A If they had marked out in box one, the end of that
17 sentence, the remainder of the original sentence,
18 if they had marked that out, then his total
19 sentence would have been three and his
20 incarcerative sentence would have been three.

21 His parole date would have been based on three
22 years. His release date would have been based on
23 three years. The sentencing judge didn't do that.
24 Thus, his parole date is based on four years, 215
25 days, and his release date is based on the three

1 years.

2 Q Okay. So his release date is based off of three
3 years, but the 240 days was not added to that three
4 years?

5 A Nor would it be. My definition of previous is
6 existing or occurring prior to something else in
7 time or order. You can't previously serve 240 days
8 on a three-year sentence that just occurred on
9 February 4, 2011. If he previously served it, the
10 only previous thing he has is the original
11 five-year sentence.

12 Q I believe you have a copy of this up there; right?

13 A Yes, sir, I certainly do.

14 Q I'm sorry to get off of what we had talked about
15 before, but --

16 THE COURT: Let me interrupt. What happens to
17 the time -- I guess he was incarcerated July 30th of
18 2010?

19 THE WITNESS: Yes, sir, or soon thereafter --
20 well, incarcerated with us soon thereafter, but, yes, he
21 would have been in the county jail as of the 30th of
22 July.

23 THE COURT: So what happens to the time from
24 July 30th of 2010, until February 4th of 2011, when the
25 sentence was changed?

1 THE WITNESS: At that period of time, from
2 July 30, 2010, until February 4, 2011, he was satisfying
3 his --

4 THE COURT: Five-year sentence or one year?

5 THE WITNESS: Four years and 125 days, yes,
6 sir. Then the four years, 125 days was changed for
7 whatever reason to three years incarcerative time. He
8 still has -- presently, right now -- he still has a
9 total sentence of four years, 125 days.

10 THE COURT: I got you. My question is -- or
11 let me ask you this: Can you tell me what you have got
12 there of what his -- if there had been no sentence
13 change on February 4th of this year, what was his
14 projected release date on that original sentence? Can
15 you tell you me that?

16 THE WITNESS: I can tell you what it was when
17 he first came to us.

18 THE COURT: Okay.

19 THE WITNESS: But I don't know this for a fact
20 because I didn't look, but I assume he has got all kind
21 of earned work credits and stuff.

22 THE COURT: Let's leave that out of the
23 equation, just a hypothetical.

24 THE WITNESS: Good deal. His release date,
25 when we first got him in October of -- excuse me.

1 Scratch that.

2 THE COURT: July?

3 THE WITNESS: July 30th of 2010, or
4 thereabouts. On August 9, 2010, his projected max-out
5 date was March 21, 2013.

6 THE COURT: Okay. And what is his projected
7 max-out date on the three years that he got in February?

8 THE WITNESS: February 18, 2012.

9 BY MR. SHAFFER:

10 Q Is that including his work credits --

11 A No.

12 Q -- the February 12 [sic] because if that's his
13 projected --

14 A Yes, sir. We did sort of mix apples and oranges
15 there. Yes, sir, his present release date is based
16 on all his good time and earned work credits that I
17 am reasonably sure he has.

18 THE COURT: Do you know what it would be
19 without that?

20 THE WITNESS: No, sir.

21 THE COURT: What happens to the good time?

22 THE WITNESS: I can do the math if you really
23 want to take the Court's time to do that.

24 THE COURT: What happens to his earned work
25 credits and good time and all that for the period

1 between July 30, 2010, and February 4, 2011? Is he
2 going to get --

3 THE WITNESS: Oh, yeah.

4 THE COURT: Does that carry over to the
5 three-year sentence?

6 THE WITNESS: Yes, sir. We create a sentence
7 start date, which is the date of sentence, which
8 originally would have been July 30, 2010. That's the
9 date of sentence.

10 I'm kind of without my cheat sheets, but I
11 think that is talked about in 24-13-240 also. The
12 sentence start date, according to statute, is the date
13 of sentence minus any pretrial jail time.

14 So when his sentence changed in February of
15 2011, he would have still had the same sentence start
16 date that he originally had in July of 2010. Any
17 credits reducing or satisfying the sentence that he has
18 is satisfying...

19 THE COURT: The second sentence so to speak?

20 THE WITNESS: Yes, sir, right.

21 THE COURT: So the start date for the three
22 years is not --

23 THE WITNESS: Any different than what it was
24 from his initial sentence back in July of 2010.

25 THE COURT: Okay.

1 BY MR. SHAFFER:

2 Q Mr. Stobbe, I believe if I remember correctly from
3 when I was monitoring this before he actually got
4 the sentence reduction, it was November of 2012?

5 A His release date?

6 Q Does that sound approximately correct?

7 A Well, hang on a second.

8 Q His release date on the three-year sentence --
9 excuse me -- his release date on a three-year
10 sentence went from March to November, I think it
11 was. I think there was four to six months. Does
12 that sound about correct?

13 THE COURT: So you are saying November of
14 2012?

15 MR. SHAFFER: Yes, Your Honor. I apologize.

16 THE COURT: So are you trying to get your
17 client more time?

18 MR. SHAFFER: No, Your Honor. I believe that
19 without work credits, I think that's where it calculates
20 to.

21 THE COURT: Oh, okay.

22 BY MR. SHAFFER:

23 Q Does that sound roughly correct? He got about a
24 six-month benefit by getting two years reduced?

25 A And I'm not trying to give anybody a hard time. I

1 got lost and I am not the most intelligent human
2 being that God ever created.

3 THE COURT: Would that person please stand up.

4 A Again, from where I'm coming from, I mean, I can
5 get you dates of when he was and what it was.
6 There is actually a screen on our computer that
7 every time something changed in his life from the
8 date we got him to today, I can tell you what
9 date that was and what it changed his release date
10 to.

11 But as I was studying for this appearance, I
12 don't ever remember anybody asking me what about
13 his time was when, and so I'm not prepared to
14 answer that.

15 Q I apologize. I think I got a little bit off of
16 what I told you I was going to go over. But if we
17 were comparing apples to apples and five years with
18 240 days pretrial detention credit versus three
19 years without it, what does that -- at 65 percent
20 time -- approximately how many months benefit did
21 he get from the two-year sentence reduction? And
22 that might have been just as convoluted as the last
23 question.

24 A It's obviously going to be less, but I'm under
25 oath, and I just -- sorry, guys. I just ain't

1 comfortable in spouting something out.

2 THE COURT: He doesn't want you to speculate.

3 A I mean, it's going to be less because three is less
4 than four years and 125 days.

5 Q Okay. I will get back on my list. So it's your
6 understanding of the S.C.D.C. policy that if
7 it's -- it would come off of the maximum amount of
8 sentencing time you could get, but it would not
9 come off of the actual sentence that the judge puts
10 down on a piece of paper?

11 A The previous time served, based on just the
12 definition of previous -- you know, existing or
13 occurring prior to something else happening -- the
14 only other thing that has happened is that his
15 probation was revoked.

16 So the 240 days, unless we are just throwing
17 out all definitions of the English language,
18 previous time, the only previous time there is is
19 the initial five-year sentence.

20 So the 240 days has got to come off the five
21 years. It can't be subtracted from three years.
22 The three-year sentence didn't exist until February
23 of 2011.

24 Q How is that not true for every sentence that
25 someone serves prior to trial?

1 A Because not everybody has split sentences. If you
2 had a flat ten-year sentence and you were in jail
3 for 240 days, whatever date your sentence date is,
4 we would subtract 240 days from it, and that would
5 become your sentence start date.

6 But he had a split sentence. He was five
7 years suspended on time served and X-number of
8 years probation -- I'm sorry. I lost my train of
9 thought. Shoot. Like I told you, I'm not the
10 smartest human being God created.

11 THE COURT: It's a confusing subject.

12 THE WITNESS: Yes, sir.

13 A But in essence if he is given time or credit for
14 time previously served, it couldn't possibly be
15 subtracted from the three years because he has
16 already previously served it. It's already been
17 subtracted from the five years.

18 THE COURT: I think what he is saying is that
19 the original sentence was not altered.

20 THE WITNESS: Again, I call everybody's
21 attention to page 675 and 676 of the statute 24-21-610.
22 I assume that is either the Attorney General or the
23 Supreme Court, one of the two, has already declared --

24 MR. SHAFFER: Objection, Your Honor.

25 THE WITNESS: -- what a total sentence is.

1 MR. SHAFFER: Your Honor, I object on the
2 hearsay. I think he is also interpreting either what
3 the Attorney General said or the Supreme Court. I
4 don't believe that he is qualified as an expert to
5 interpret.

6 THE COURT: No. He just said it was his
7 opinion that what is stated in the books is what their
8 opinion would be. I don't think he is stating that
9 is his opinion. It's not his interpretation. He is
10 just stating that is his opinion or it's his state of
11 mind.

12 MR. SHAFFER: Okay. No further questions at
13 this time. Actually we might call Norman Hayes for one
14 or two questions.

15 THE COURT: I mean, she gets a chance too.

16 MR. SHAFFER: Yes, Your Honor. I was just
17 clarifying that we wouldn't be doing that.

18 THE COURT: But there is no -- he hasn't
19 served any time awaiting the reconsideration sentence
20 that he hasn't been given credit for?

21 THE WITNESS: Correct.

22 THE COURT: That's your position.

23 MR. SHAFFER: If I may just clarify with about
24 three questions.

25 THE COURT: Okay. Ms. May is very tolerant.

1 BY MR. SHAFFER:

2 Q Which periods of time are currently being -- is he
3 currently earning towards the three-year sentence?
4 What is currently going towards the three-year
5 sentence? Which periods of time?

6 A Towards the three-year sentence, he is receiving
7 his service time, which is his day-for-day credit
8 for however long he has been incarcerated.

9 Q I apologize. What calendar period of time is he
10 currently -- or when he was incarcerated that goes
11 toward his -- I'm not talking about his good
12 credits or anything like that -- I'm saying what
13 calendar period of time has he been incarcerated
14 that goes toward his three-year sentence?

15 THE COURT: I think what he is asking --

16 THE WITNESS: July 30, 2010, forward.

17 THE COURT: That's his start date; right?

18 THE WITNESS: Yes, sir.

19 MR. SHAFFER: Thank you.

20 THE WITNESS: Towards his three-year sentence.

21 THE COURT: Anything?

22 MS. MAY: May it please the Court, Your Honor.

23 The Attorney General's Office, myself, we asked that Ben
24 Aplin be here since this is a question of S.C.D.C.
25 policy. We would ask the Court that he be recognized to

1 ask questions during this hearing.

2 THE COURT: I thought he was going to be a
3 witness. I wanted to get him up there on the witness
4 stand.

5 MR. APLIN: Your Honor, that's fine. It's a
6 little unusual to do it that way. I was called here as
7 a witness. I was at the hearing when he was resentenced
8 in front of Judge Cooper. I represented the State at
9 that probation reconsideration hearing. So I do know
10 some facts and things about the case.

11 THE COURT: Well then, what is your -- if he
12 is going to be a witness, do you consent to him being
13 allowed to also act as an attorney? We don't want to
14 violate any ethical duties.

15 MR. SHAFFER: If he is not going to be a
16 witness, I have no problem with it.

17 THE COURT: He is going to be a witness, I
18 think, possibly. Do you want to talk to your lawyer
19 about that and see what she says?

20 (Pause.)

21 THE COURT: Let's go off the record for a
22 second.

23 (Whereupon there is a discussion off the
24 record.)

25 THE COURT: While they are conferring, if

1 Judge Cooper -- and I am looking at, I believe, the
2 February 4th sentencing sheet -- if Judge Cooper had
3 said the three years and then crossed through the
4 remainder of the original sentence?

5 THE WITNESS: His total sentence would then be
6 three and his incarcerative sentence would be three.

7 THE COURT: He wouldn't get any credit for the
8 240?

9 THE WITNESS: Well, he already has had that
10 credit because the 240 reduced the five years to 4
11 years, 125 days.

12 THE COURT: If Judge Cooper had crossed out
13 the remainder of the original sentence and credit for
14 time served, then what would have happened?

15 THE WITNESS: The Department of Corrections
16 hates credit for time served because we don't read
17 judges' minds, and we are not in the courtroom when the
18 sentence goes down.

19 THE COURT: Well, let's say he said, "Credit
20 for 240 days time served.

21 THE WITNESS: We would have most happily --
22 Mention (phonetic) versus State -- we would have most
23 happily given him credit for the 240 days towards the
24 three-year satisfaction of the sentence.

25 THE COURT: Are y'all ready? What do you want

1 to do?

2 MR. APLIN: Your Honor, I'm not going to
3 testify. I will just act on behalf of the State and
4 co-counsel and ask a few questions of Mr. Stobbe if
5 that's okay.

6 THE COURT: Is that all right?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. APLIN: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. APLIN:

12 Q Mr. Stobbe, do you have the sentencing sheet in
13 front of you there, you said?

14 A Yes, sir.

15 Q I think this is kind of what Judge Miller was
16 getting at a minute ago. Look at those sentencing
17 sheets for me. Those sentences indicate five years
18 suspended to time served and three years probation;
19 correct?

20 A Yes, sir.

21 Q What does that mean? What is time served?

22 A Whatever the jailer -- or in this case since the
23 judge signed it and dated it -- Mention versus
24 State throws what the jail says out the window.
25 The Supreme Court of South Carolina told us we are

1 supposed to do what the judge tells us.

2 So in that the 240 days is marked as previous
3 time served, that's how much credit that time --
4 where it says five years suspended to time served,
5 time served equals 240 days.

6 Q So this was a split sentence. He actually was
7 sentenced to five years, suspended to a term of
8 incarceration, then followed by a term of
9 probation?

10 A Correct.

11 Q And the term of incarceration happens to equal the
12 amount of time he served pretrial detention?

13 A That is correct.

14 Q So he was given 240 days of credit?

15 A Right.

16 Q Knocked his sentence down right there. He
17 satisfied the 240 days in jail?

18 A That's what this form says, yes, sir.

19 Q Now looking at the Form 9, which is the revocation
20 order signed by Judge Cooper on February 4th?

21 A Yes, sir.

22 Q There are two horizontal lines on that form towards
23 the bottom of the form, and there are a couple of
24 boxes in between those two lines. Do you see
25 those?

1 A I hope so, sir.

2 Q I am looking at there are two X. marks in those two
3 boxes.

4 A I've got you.

5 Q The first one says, "The defendant is given credit
6 for pre-revocation hearing detention time on the
7 current probation violation to be calculated and
8 applied by the South Carolina Department of
9 Corrections"?

10 A That's correct.

11 Q Can you explain to the Court what that is referring
12 to? Why would someone get credit if that box was
13 checked?

14 A If the South Carolina Department of Probation,
15 Parole, and Pardon Services had issued a warrant
16 for this individual and he was incarcerative
17 pending his probation revocation hearing, we would
18 have given that credit towards the three-year
19 incarcerative sentence that the sentencing document
20 of February 4, 2011, indicates.

21 Q Okay. In other words, if he had been arrested on
22 the probation warrant and sat in jail for 30 days
23 before he came in front of Judge Cooper in July of
24 2010, that box means he would have gotten 30 days
25 of credit on that three-year revocation?

- 1 A I'm sorry. Could you repeat that question because
2 I -- I'm sorry.
- 3 Q He gets arrested for the probation warrant.
- 4 A Okay. So he has already got the five-year
5 sentence?
- 6 Q This is after sentencing. He is on probation. He
7 gets arrested with the probation warrant. His sits
8 in jail for 30 days.
- 9 A Yes, sir.
- 10 Q And then comes in front of Judge Cooper July 30th.
- 11 A Yes, sir.
- 12 Q If that box is checked when he gets the -- whatever
13 the revocation time is five years, three years --
14 he would get the 30 days credit off that time?
- 15 A Towards the revoked sentence of that date, yes,
16 sir.
- 17 Q So that's what that box is intended to cover is the
18 pre-revocation hearing detention time on the
19 probation warrant?
- 20 A That's correct.
- 21 Q The second box says, "The defendant has previously
22 served blank months or years on this sentence." In
23 the parenthetical what does it say below that?
- 24 A "Split sentence time and/or prior partial
25 revocation time."

- 1 Q What does split sentence time refer to?
- 2 A The 240 days that he has already been given time
3 served.
- 4 Q In other words, a split sentence is like we talked
5 about. It's a sentence that has been suspended
6 partly to a period of incarceration followed by a
7 period of probation?
- 8 A That's correct.
- 9 Q So in this instance that 240 days simply recognizes
10 the fact that he did a split sentence already?
- 11 A Yes, sir.
- 12 Q And your normal course of operations at the
13 Department of Corrections, would you take 240 days
14 off the three-year revocation sentence that was
15 imposed that date?
- 16 A No.
- 17 Q And that's because it has already been served?
- 18 A That's correct.
- 19 Q If you gave him another 240 days, wouldn't he be
20 given double credit for that?
- 21 A Yes, and that's why we didn't do it.
- 22 Q Instead this little blank area up here (indicating)
23 where it says, "Convert restitution and fine to
24 civil judgment"?
- 25 A Yes, sir.

1 Q If the judge wrote 240 days of credit --

2 A Yes, sir.

3 Q -- in that blank?

4 A Right.

5 Q Would you give him 240 additional days of credit?

6 A Yes.

7 Q But that's not what Judge Cooper did?

8 A No.

9 MR. APLIN: That's all I have.

10 THE COURT: Any redirect?

11 MR. SHAFFER: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MR. SHAFFER:

14 Q Do judges always understand these forms?

15 A Sir, other than Judge Finney, who I had the
16 privilege of eating breakfast with on two
17 occasions, to the best of my knowledge, I've never
18 had a personal conversation with a judge. So I
19 don't know, sir.

20 Q You said that you come to court a good bit?

21 A Years ago I lived in courtrooms, yes, sir. Since
22 Shabazz, not so much anymore.

23 Q But whenever you come to court, are you generally
24 dealing with problems with interpretations of
25 sentencing sheets?

1 A It would be fair to say that quite a bit is, yes,
2 sir.

3 Q Now, going back over the first box underneath where
4 it says, "The defendant is given credit for
5 pre-revocation hearing detention time on current
6 probation violation to be calculated and applied by
7 the South Carolina Department of Corrections," what
8 exactly about that -- you said that deals with the
9 warrant; right? The time that he served on that
10 warrant?

11 A Yes, sir.

12 Q Where does it say only on that warrant?

13 A Generally people aren't locked up unless there is
14 a warrant. The only -- it says prehearing
15 detention time. Most people don't volunteer to go
16 to jail; so there is generally a warrant issued to
17 have them arrested.

18 Q Under the second box up underneath that, you said
19 that that is just recognizing that there was a
20 split sentence; is that correct? That is your
21 interpretation of it?

22 A That certainly is an interpretation, yes.

23 Q That's an interpretation that S.C.D.C. follows?

24 A S.C.D.C. assumes that 240 days was previously
25 served on the original five-year sentence, yes,

1 sir.

2 Q Okay. In a situation -- if everything else in this
3 sentencing sheet was the same -- but that box was
4 not checked and it did not say 240 days in the
5 sentence, what would be the affect on his
6 sentencing?

7 A I'm not sure I want you to repeat the question or
8 just let me parrot back what I think you just asked
9 me.

10 Q Go ahead.

11 A You are saying if there was absolutely nothing in
12 that box where it says 240, if you are saying there
13 wasn't anything there, what would we have done?

14 Q Yes. Would there be any effect to his sentence?
15 Would it have changed anything?

16 A Well, we would have probably been ringing the
17 chimes off P.P.&P.'s phone to find out what the
18 previous time served was.

19 Q So if that box, if the box that says, "The
20 defendant has previously served 240 days on this
21 sentence," was not checked and that was blank, you
22 would have applied credit? Is that what you are
23 saying?

24 A We wouldn't have applied credit because we wouldn't
25 know what credit to apply.

1 Q Okay.

2 A I mean, the original sentence -- I don't have a
3 copy of that -- but in the Form 9 probation
4 revocation sheets that are dated February 4, 2011,
5 and the original one, which is July 30, 2010, it
6 indicates that the original sentence was five years
7 suspended on time served and three years probation.
8 The assumptions are --

9 THE COURT: That is the original? Casey
10 Manning's original sentencing sheet?

11 THE WITNESS: That's the original sentencing
12 sheet.

13 A So even on the original sentencing sheet that the
14 Department of Corrections doesn't have because he
15 never came to our agency, it indicates that that is
16 where the 240 days are right there. Via Mention
17 versus State, we would give him credit toward that
18 five-year sentence.

19 Q But what effect would it have -- what effect does
20 it have? I mean, essentially if you -- I'm not
21 talking about towards the five-year sentence -- is
22 the only effect of that box to tell you how much
23 time he has previously served pretrial or does that
24 box actually have some sort of effect toward the
25 sentence? Would it change --

1 A It has a huge effect on the sentence if your parole
2 date is based on either five years or four years,
3 125 days. If I was an inmate, I would be real
4 interested in that.

5 Q Well, in Norman Hayes' situation -- so it's just
6 informing people? It doesn't have any actual
7 effect on what y'all do; is that correct?

8 A No, sir, it affects a whole bunch of what we do.

9 Q On his three-year sentencing sheet, if everything
10 else was the same, the February 4th sentencing
11 sheet, except that box, what would it have changed
12 about his time that he is serving?

13 A If we didn't get any clarification from P.P.&P. as
14 to what the previous time served is, he would be
15 doing a three-year sentence.

16 Q Okay. So that box takes -- he would be doing a
17 three-year sentence?

18 A Based on what the judge did on February 4, 2011.

19 Q So in Norman Hayes' case, he would be doing a
20 three-year sentence. He is doing a three-year
21 sentence now; is that correct?

22 A He is doing an incarcerative sentence of three
23 years.

24 Q Okay.

25 A His parole is based on his total sentence, which is

1 four years, 125 days.

2 Q I apologize. I'm not trying to beat a dead horse
3 here. But what steps would have happened and what
4 would have happened to his sentence, his
5 incarcerative and his actual sentence, if those are
6 actually two separate things?

7 What effect would it have had if on
8 February 4th, Judge Cooper left off that one box?
9 The box that says, "The defendant previously served
10 240 days on this sentence"?

11 A It would have sort of put us into the investigative
12 mode because generally we can read. It says five
13 year suspended on time served and three years
14 probation.

15 So obviously there was some previous time
16 served. We didn't have the original sentencing
17 sheet. Based on the quality of this one, if the
18 resolution would have been that we got the original
19 sentencing sheet, it would have put everything to
20 bed in your scenario.

21 Q Would that have changed anything on his
22 incarcerative -- if you did your entire
23 investigation and got all the information back --
24 would that have changed anything on his
25 incarcerative versus his other sentence, his

1 regular sentence, his five years?

2 A His total sentence? I think the answer to that is
3 no because he has, as of July 30th -- I'm sorry --
4 February 4, 2011, he has a three-year incarcerative
5 sentence.

6 Q So it's fair to say that regardless of what Judge
7 Cooper would have put in that box, it wouldn't have
8 made a difference for Norman Hayes?

9 A Not for his max-out date of three years.

10 Q Or his total sentence if you are going off of your
11 definition of what the total sentence is?

12 A Again, we would have researched to find out what
13 that -- what the previous time served was because
14 we would not have been able to set a total
15 sentence, you know, number there. You have got to
16 have something in here.

17 Q So is it fair to say outside of that informing you
18 and informing the prisoner about the previous time
19 served, it has no effect, no practical effect on
20 the sentence, that box?

21 A It has a practical effect on setting his parole
22 date.

23 Q Okay. What practical effect is that?

24 A It's five years minus whatever amount of days are
25 in that box.

1 Q If Judge Cooper would have done that, it would have
2 moved his parole date up? If Judge Cooper would
3 have left his blank, it would have moved his parole
4 date up or moved it back?

5 A It depends on what the outcome of our investigation
6 as to what the previous time served was.

7 Q Yeah, but you would have found that he previously
8 served that time; correct?

9 A Yes, you would have to.

10 Q And at that point, whenever you found that out,
11 would it have any effect on his parole date even?

12 A Yes.

13 Q No. What I'm trying to say is if he left it blank,
14 would it have any effect if you would have found
15 out about the 240 days?

16 A We would have demanded that P.P.&P. get us an
17 amended Form 9, the probation revocation. Form 9
18 is another name for a probation revocation.

19 Q So that box, the one that we are talking about, is
20 basically to give you notice about how many days he
21 served pretrial and has no effect --

22 A Previously served on the original sentence, yes,
23 sir.

24 MR. SHAFFER: The Court's indulgence.

25 (Pause.)

1 BY MR. SHAFFER:

2 Q One final question. The three years, when you
3 define that, the three years he is serving, you
4 would define that as a sentence; correct?

5 A Yes.

6 THE COURT: Any further questions?

7 MR. APLIN: Your Honor, not to belabor the
8 point, but I have just a couple of quick follow-up
9 questions.

10 THE COURT: Yes, sir.

11 **RECROSS EXAMINATION**

12 BY MR. APLIN:

13 Q Mr. Stobbe, that same box, the one that we have
14 been focusing on where it's indicated 240 days on
15 that sentence, that same box is for use for prior
16 partial revocation time as well; correct? The
17 parenthetical under that?

18 A Yes, sir.

19 Q You, I assume, have seen sentences where judges
20 have done short revocation time on a probation case
21 and then simply continued them on probation?

22 A Correct.

23 Q Say revoke 30 days and continue or revoke 60 days
24 and continue?

25 A Yes, sir.

1 Q If that revocation time is less than 90 days, where
2 do they serve that time?

3 A In the county jail.

4 Q So they never come to the Department of
5 Corrections?

6 A No, sir.

7 Q So if someone had gotten several short revocation
8 time -- say 30 days here, 30 days next time, 60
9 days next time -- unless that time is indicated in
10 this box on the Form 9, would Corrections know that
11 he has served that 60, 90, 120 days?

12 A No, sir.

13 Q And if you know he served that time, you can apply
14 it towards the parole eligibility date; right?

15 A That's correct.

16 Q On the original sentence?

17 A Right. And that's to the better of the inmate.

18 Q Right. So by putting you on notice both of the
19 prior partial revocation time and any split
20 sentence time, you know how many days he has
21 actually satisfied, either in prison or the
22 detention center or the jail, wherever, on this
23 original sentence?

24 A That's correct.

25 Q Thank you.

1 THE COURT: Can I just ask you this? If
2 you've got someone who is on probation and then gets
3 picked up on a different offense -- has not received a
4 conviction yet, is brought to court -- let's say they
5 are on probation for possession of crack.

6 They are brought to court. They get probation
7 on the possession of crack, three suspended and three
8 years probation. Then a year into the probation, they
9 get arrested for some other offense, housebreaking or
10 burglary third.

11 They sit in jail for 90 days on the burglary
12 third, and then probation serves them with a warrant for
13 violation of probation. Thirty days after that they go
14 to court and get a sentence.

15 Let's say it's five years -- or three years on
16 the burglary case. They consent to have their violation
17 of probation heard at the same time, and they revoke
18 three and terminate, run them concurrent.

19 He is going to get a 120-day credit on the
20 burglary -- correct -- because he has been in jail since
21 the original arrest date?

22 THE WITNESS: Which is 120 days?

23 THE COURT: One hundred twenty.

24 THE WITNESS: All right.

25 THE COURT: Then 90 days after that original

1 THE COURT: Can I just ask you this? If
2 you've got someone who is on probation and then gets
3 picked up on a different offense -- has not received a
4 conviction yet, is brought to court -- let's say they
5 are on probation for possession of crack.

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7 on the possession of crack, three suspended and three
8 years probation. Then a year into the probation, they
9 get arrested for some other offense, housebreaking or
10 burglary third.

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12 third, and then probation serves them with a warrant for
13 violation of probation. Thirty days after that they go
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16 the burglary case. They consent to have their violation
17 of probation heard at the same time, and they revoke
18 three and terminate, run them concurrent.

19 He is going to get a 120-day credit on the
20 burglary -- correct -- because he has been in jail since
21 the original arrest date?

22 THE WITNESS: Which is 120 days?

23 THE COURT: One hundred twenty.

24 THE WITNESS: All right.

25 THE COURT: Then 90 days after that original

1 arrest he gets the violation of probation warrant. So
2 he is going to get 30 days.

3 THE WITNESS: Okay. Just to clarify. It
4 depends on when the warrant is issued by P.P.&P.

5 THE COURT: Not served?

6 THE WITNESS: No. Blakeney versus State says
7 that if an entity could have known, should have known or
8 would have known that a guy is incarcerated, whether
9 it's in the same county, six counties over, if they
10 could have, should have or would have known that they
11 were jailed, and they have a warrant that has been
12 issued --

13 THE COURT: No, in my hypothetical the warrant
14 is issued because he is arrested for the burglary.

15 THE WITNESS: So it's issued and served the
16 same day?

17 THE COURT: No, no. He gets arrested -- you
18 are saying he gets picked up, and the probation should
19 have known he was picked up?

20 THE WITNESS: Correct.

21 THE COURT: That is the answer to my question.
22 I was going to ask you whether or not his parole --

23 THE WITNESS: That's how -- again, I'm not a
24 lawyer. Okay? But that was my understanding of how
25 Blakeney v. State got to be because somebody issued a

1 warrant, jailed the guy. He stayed in jail for like six
2 to nine months.

3 Then they served the warrant on him. The deal
4 was they were trying to start his time or his credits
5 from the date they served the warrant on him, not the
6 date they jailed him because of the warrant.

7 Blakeney v. State, as I understand it, is if
8 you could have, should have, would have known that he
9 was jailed and you have a warrant issued for that
10 individual, then if he is jailed somewhere else and you
11 have got a warrant that has already been issued -- he is
12 jailed.

13 He gets credit for the warrant that they
14 haven't served on him because they could have, if
15 somebody was miraculous and somehow knew that he was in
16 the next county locked up.

17 THE COURT: Okay. I was just going to ask if
18 there were two different parole dates for the concurrent
19 sentences.

20 MR. APLIN: Your Honor, I think -- if you
21 don't mind.

22 THE COURT: No, go ahead.

23 MR. APLIN: In Blakeney what Mr. Stobbe is
24 talking about is if let's say in your scenario, the
25 probation agent, just for whatever reason, waited 90

1 days and then issued the warrant and lodged it as a
2 detainer, that would start the clock ticking, whether he
3 had served the warrant or not.

4 Once he has lodged that detainer with the
5 other county or he should have lodged the detainer, the
6 offender, the inmate, is going to get credit on both of
7 those cases but not until he issues that warrant.

8 THE WITNESS: Right, the warrant has got to be
9 issued.

10 MR. APLIN: There would be different dates.
11 If he waited 90 days to issue the warrant, then that's
12 what you are talking about. There would be a slightly
13 different calculation on those two sentences.

14 THE COURT: And two separate parole dates for
15 each of those two?

16 THE WITNESS: Right. Because we have a
17 running battle all the time about a concurrent sentence.
18 Concurrent sentence means that it runs with any other
19 sentence based on all the other rules that say that a
20 sentence starts the date of sentencing, minus any
21 pretrial jail time.

22 THE COURT: So if a judge writes on the
23 violation of probation start date of the 120 days as
24 opposed to 30, you will give the 120?

25 THE WITNESS: That is correct, sir.

1 THE COURT: Is there anything else y'all want
2 to ask?

3 MR. SHAFFER: Your Honor, just one question,
4 one issue. What we have been talking about and what I
5 had understood is that the opinions that he is giving
6 are the opinions of S.C.D.C. and not necessarily the
7 law. He is not testifying as an expert; is that
8 correct?

9 THE COURT: He wasn't qualified as an expert,
10 no.

11 MR. SHAFFER: Yes, Your Honor. He is
12 testifying for the opinions of S.C.D.C. and not the
13 state of the law; is that correct? I mean, that was my
14 interpretation.

15 THE COURT: He was just answering at his job
16 as the director of -- the branch chief of records,
17 release, and management.

18 MR. SHAFFER: Thank you, Your Honor.

19 THE COURT: Do you want to let him off the
20 stand? Has anybody else got any questions they want to
21 ask him?

22 THE WITNESS: May I be excused, sir?

23 THE COURT: You can.

24 THE WITNESS: I've got 823 inmates I am
25 releasing tomorrow.

1 THE COURT: Thank you very much.

2 (Witness leaves the witness stand.)

3 THE COURT: Mr. Stobbe?

4 THE WITNESS: Yes, sir.

5 THE COURT: I believe there were two -- was he
6 sentenced on two offenses by Casey Manning?

7 THE WITNESS: Yes, sir. Well, I don't want to
8 speculate as to who originally sentenced him.

9 THE COURT: I am just saying because I've got
10 a possession of crack thing here, and I thought I gave
11 you a conspiracy.

12 MR. SHAFFER: There were two offenses.

13 THE COURT: You don't have both sentencing
14 sheets.

15 THE WITNESS: I'm sorry?

16 THE COURT: I'm not trying to -- I am just
17 telling you there were two.

18 THE WITNESS: You want to give it up, fine.
19 If you don't, that's fine too.

20 THE COURT: Do you want it back? I will not
21 keep it.

22 MS. MAY: I have a copy.

23 THE COURT: You can have it. Thank you very
24 much.

25 MR. SHAFFER: We do have two copies, one copy

1 of each; right?

2 THE COURT: The Department of Corrections
3 didn't have either one; so I gave it to them.

4 THE WITNESS: The original sentence.

5 THE COURT: Yes. Anything else?

6 MR. SHAFFER: Your Honor, I believe I am going
7 call to Norman Hayes.

8 THE COURT: Come around, Mr. Hayes..

9 NORMAN JAMES HAYES, being
10 first duly sworn, testified as follows:

11 CLERK: State your full name when you are
12 comfortably seated, please.

13 THE WITNESS: Norman James Hayes.

14 DIRECT EXAMINATION

15 BY MR. SHAFFER:

16 Q Mr. Hayes, just briefly for background purposes,
17 when were you arrested on these charges?

18 A Initially? July 30th.

19 Q Oh, no. When were you initially arrested on the
20 charges that got you probation, the conspiracy and
21 the other one?

22 A I think, October 3rd, 2004 -- 2002. I think it was
23 2004.

24 Q Okay.

25 THE COURT: Show him the paperwork. This is

1 all -- it was 240 days before you pled guilty; right?

2 THE WITNESS: Yes, sir.

3 MR. SHAFFER: Your Honor, I believe it's in
4 the Court's file.

5 THE COURT: Yes.

6 BY MR. SHAFFER:

7 Q Norman, whenever you began serving your time in the
8 Department of Corrections, what was your -- or
9 excuse me -- in January of this year, right before
10 your sentence got reduced from five years to three
11 years, what was your sentence or what was your
12 projected release date?

13 A My projected release date was March 2013.

14 Q March 2013?

15 A Yes, sir.

16 Q And what was your projected release date whenever
17 your sentence got reduced from three to five years?

18 A It went to like February 2012.

19 Q And was part of that dealing with your -- with the
20 benefits that you had for work credits?

21 A No, sir.

22 Q Okay.

23 A Excuse me. As a matter of fact, it went to -- when
24 I was resentenced on February the 4th, my projected
25 released date was April 2012.

1 Q April of 2012?

2 A April of 2012.

3 Q So you got a year's benefit?

4 A Basically.

5 THE COURT: Well, the March 2013 time, that
6 included your good time credit and all that; right?

7 THE WITNESS: No, sir, that was -- that was
8 good time. That's when I had the initial sentence of
9 five years.

10 THE COURT: Okay. But the April date didn't
11 include any good time credit; right? Of course, you
12 hadn't earned any by then.

13 THE WITNESS: Yeah, the April date, it
14 included good time.

15 THE COURT: I don't mean to steal your
16 thunder.

17 MR. SHAFFER: It's all right.

18 THE COURT: Mr. Stobbe testified today your
19 current projected release date is February 18th of next
20 year. Is that your understanding?

21 THE WITNESS: Yes, sir, that's with earned
22 work credits.

23 THE COURT: All that.

24 THE WITNESS: Yes, sir.

25 MR. SHAFFER: Your Honor, honestly, I don't

1 believe I have anymore questions for him. I'm not sure
2 but I think that's it.

3 THE COURT: There is not a whole lot of
4 testimony we can offer here. It's a legal question
5 really. Anything else you want to tell us?

6 THE WITNESS: Well, I'd like to say that I
7 heard the testimony of Mr. Stobbe. I think Mr. Stobbe
8 has made a mistake regarding to my sentences. I only
9 have one sentence. That's a sentence of three years.

10 He said I was serving a total sentence of four
11 years and four months. When I went back and was
12 sentenced on February 4th by the Honorable Judge Cooper,
13 he did away with that five-year sentence and gave me a
14 flat sentence of three years and gave me credit for 240
15 days.

16 That's the issue. That's why we are here in
17 court right now because S.C.D.C. is not giving me the
18 credit for those 240 days that Judge Cooper gave me
19 credit for.

20 THE COURT: All right.

21 MR. SHAFFER: No other questions.

22 MR. APLIN: No questions.

23 THE COURT: Thank you very much. How are you
24 doing? Is everything going good for you?

25 THE WITNESS: I would like to be out of prison

1 is all.

2 THE COURT: I know, yes, sir.

3 MR. SHAFFER: Your Honor, this is a legal
4 argument. We don't have any anymore witnesses, but I do
5 have a couple of things I would like to bring up. I'm
6 not sure if you would like for the State to --

7 THE COURT: Well, they might have something
8 they want to say. Have y'all got anything? Isn't this
9 just a legal issue?

10 MR. APLIN: It is, Your Honor. I don't think
11 there is anything besides what you have heard by way of
12 testimony today.

13 THE COURT: Have y'all written a little brief
14 for me?

15 MR. SHAFFER: Yes, Your Honor. I do have one.
16 I apologize for the short notice to the State. I gave
17 it to them this morning.

18 THE COURT: I will give them time to reply.
19 This is not something I will -- I need to and would like
20 to look at it.

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: Have you filed it?

23 MR. SHAFFER: No, Your Honor. I have not yet.

24 THE COURT: Why don't you just file it, and
25 then y'all can get it to me sometime soon.

1 MR. SHAFFER: There's a couple issues that
2 came up. The first thing I would like do is point out
3 that 24-13-40 says clearly --

4 THE COURT: 24-13-40 and 240?

5 MR. SHAFFER: Forty. It says unambiguously,
6 "In every case in computing the time served by a
7 prisoner, full credit against the sentence must be
8 given for the time served prior to trial and
9 sentencing."

10 There's two exceptions to that. Neither of
11 those apply here. I believe that whatever policy the
12 Department of Corrections is using in figuring out two
13 separate sentences, really their policy is not -- I will
14 say that their policy not giving credit for this
15 three-year sentence is in violation of the statute. I
16 believe --

17 THE COURT: I mean, your client knows that.
18 That's the heart of the issue. Well, Judge Cooper
19 sentenced your client on violation of probation. In
20 order for him to wipe out the five-year sentence that
21 Judge Manning gave your client -- and that's what you
22 are asking me or that's what you are asserting. That's
23 what your position is if I'm not mistaken.

24 MR. SHAFFER: To a certain extent, I believe
25 they are one and the same.

1 THE COURT: How can one circuit judge do that
2 to another circuit judge?

3 MR. SHAFFER: Your Honor, I believe that is
4 included in my brief in a footnote. The State never
5 objected to it. I believe the law of this case at this
6 point, it was --

7 THE COURT: Well, if you don't mind me
8 interrupting. I have a feeling that no matter what I
9 rule in this matter, some other Court might be looking
10 at it. Am I right?

11 MR. SHAFFER: I believe -- well, I can't speak
12 for the State, Your Honor.

13 THE COURT: Well, I think if I rule for you,
14 yes, I think -- I will speak for the State. They will
15 appeal it. But what if I rule for them?

16 MR. SHAFFER: Your Honor, it will be appealed
17 as well.

18 THE COURT: Okay. That's kind of what I
19 thought.

20 MR. SHAFFER: I believe that there is --
21 essentially I think the way the Department of
22 Corrections views it and probation is that these are two
23 totally separate sentences, the three-year sentence and
24 the five-year sentence.

25 But the problem with that is that raises a

1 bunch of issues regarding him being punished for the
2 probation violation versus punishment for the original
3 sentence.

4 Generally, when you violate probation, it's
5 the extension and reinstatement -- I think the case
6 law says it is a reinstatement of the previous
7 conviction.

8 THE COURT: Right. I guess Judge Cooper kind
9 of felt like, "Well, Mr. Hayes, he doesn't need to get
10 the whole thing. He just needs to get three." That
11 doesn't mean the whole thing goes away. That's the
12 State's position.

13 Do you have something to show me that -- to me
14 from where I am sitting it's an issue of comity. One
15 circuit judge does not have the authority to overrule
16 another circuit judge's decision. I can't go change
17 some other judge's sentence. Is there some -- do you
18 have authority that says I can do that?

19 MR. SHAFFER: Your Honor, I believe that at
20 this point, you would not be changing another judge's
21 sentence. I believe that you would be --

22 THE COURT: Isn't that what you are suggesting
23 happens when Judge Cooper gives him a three-year
24 revocation as opposed to the full revocation?

25 MR. SHAFFER: Your Honor, I believe to a

1 certain extent that is one way of looking at it, but the
2 State certainly used that to their advantage and they
3 appealed. They used that hearing as a valid hearing and
4 a valid reduction in the appeal.

5 Let me give -- Ben might have a different way
6 of looking at it. I am trying to remember back to all
7 the issues that were argued because I opposed their
8 motion to dismiss. But certainly regardless of that,
9 the State never appealed that decision as to whether or
10 not --

11 THE COURT: That wouldn't have been a valid
12 appeal. That would have been frivolous for them. It
13 was Judge Cooper's discretion with respect to how much
14 time he revoked.

15 That's his discretion because he has got this
16 violation of probation issue before him. But what you
17 are suggesting is that Judge Cooper can wipe the slate
18 clean with what Judge Manning did or did wipe it clean
19 when he imposed only a partial revocation.

20 MR. SHAFFER: I think effectively he did, Your
21 Honor. I think he imposed a three-year sentence.

22 THE COURT: That's why this is so complex. I
23 have got some real -- I don't think he can do that. I
24 don't think he did do it.

25 MR. SHAFFER: Your Honor, the one issue I

1 would like to point out is that three years and
2 terminate is the same thing as reduction to the
3 sentence. I mean, no matter how the Department of
4 Corrections looks at, it's the exact same thing.

5 THE COURT: Okay. I don't think that their
6 treatment -- if Judge Cooper had originally done three
7 years and terminate -- they would not have changed their
8 position that the sentence was one year or five years
9 minus time served as opposed to the incarcerative
10 sentence of three years. Could I be wrong?

11 MR. STOBBE: If I followed you correctly, sir,
12 yes, that would be correct. Unless the judge draws a
13 line through that remainder of the original sentence,
14 the four years and 125 days is still going to be used
15 as the total sentence for which his parole date is
16 based.

17 THE COURT: So maybe the State ought to --
18 well, I don't know. I don't know that one judge can do
19 that to another judge's sentence. They can do it
20 effectively, but they can't wipe something out.

21 MR. SHAFFER: Your Honor, if I may?

22 THE COURT: Yes.

23 MR. SHAFFER: I believe that another possible
24 remedy, other than just straight giving him the credit,
25 would be actually to more or less remand the case for

1 another sentencing hearing. I believe at that point --

2 THE COURT: How can I do that?

3 MR. SHAFFER: Well...

4 THE COURT: I don't really have that issue
5 before me. The State didn't get notice that that was a
6 remedy you were seeking.

7 MR. SHAFFER: I understand. I was not seeking
8 it up until this point. It was something I am thinking
9 off the top of my head.

10 THE COURT: I don't want to see Mr. Hayes
11 suffer, to suffer any harm, but I also -- these are very
12 complex and far-reaching consequences that result from
13 what you are seeking to do.

14 MR. SHAFFER: Your Honor, if I may. I would
15 like to supplement my memorandum.

16 THE COURT: Yes, I will give y'all some time.
17 I haven't seen it yet. I suspect that this would be a
18 good preparation for perhaps -- well, a brief to the
19 Supreme Court or something. I don't know.

20 MR. SHAFFER: Yes, Your Honor. One thing I
21 would ask is that -- and since we are all here and this
22 is why I am asking. If the State does seek to appeal,
23 if do you rule in favor of the applicant and the State
24 does seek to appeal, I would like -- I would like to set
25 an appeal bond.

1 I know the holidays are coming up. We are
2 dealing with about three months time right now between
3 this making a difference in Mr. Hayes' life and this not
4 making a difference in Mr. Hayes' life.

5 THE COURT: Which is why I presume the State
6 was obliged in making this such a short, quick hearing,
7 expedited hearing. I don't know -- perhaps some branch
8 chief. I don't know how that works. I will have to
9 take a look at it. Y'all need to file your briefs. I'm
10 sure -- Mr. Hayes seems like a really fine man.

11 MR. HAYES: Thank you, Your Honor.

12 THE COURT: And I hate to see anyone suffer,
13 but our system of law is the object of this hearing, I
14 think. I guess you're questioning the authority of
15 the Department of Corrections to interpret the two
16 separate sentences, the incarcerative sentence versus
17 the --

18 MR. SHAFFER: The primary point that I was
19 going to make is that I believe that -- this is the
20 primary point, and I am sure I will bring up some
21 sub-issues in my memo -- but 24-13-40 prohibits them
22 from not giving him credit towards this sentence.
23 That's my primary lead-off argument.

24 THE COURT: Okay. I don't think anybody
25 disagrees with that.

1 MR. SHAFFER: They are not giving him credit
2 toward the three-year sentence because it is a
3 sentence.

4 THE COURT: That's where the rub is. It's the
5 difference between the incarcerative sentence and the
6 sentence.

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: Thank you very much.

9 MR. APLIN: Thank you, Your Honor.

10 THE COURT: You can e-mail me those briefs
11 whenever you get them done. They will need a little bit
12 of time to give their reply brief. When do you think
13 you can do it?

14 MR. SHAFFER: I can have mine done to y'all by
15 the end of the week. It's just adding to what I have
16 already done.

17 THE COURT: How much time do y'all want? The
18 9th would be the next Friday.

19 MR. APLIN: It shouldn't take more than a
20 week.

21 THE COURT: You kind of know where it's going.

22 MR. APLIN: Right, I know.

23 MR. SHAFFER: I will go ahead and give
24 Mr. Aplin a copy of the first draft.

25 THE COURT: Ms. May, when will your brief be

1 up here?

2 MS. MAY: The same time as Mr. Aplin's.

3 THE COURT: Thank y'all very much.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 30th day of November, 2011.

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

April 30, 2012

L. Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2012 JAN 27 3:49

Norman Hayes

Applicant,

vs.

STATE OF SOUTH CAROLINA

Respondent.

) IN THE COURT OF COMMON PLEAS
) THE ELEVENTH JUDICIAL CIRCUIT

2011-CP-32-3630

MEMORANDUM IN SUPPORT OF
POST CONVICTION RELIEF

FACTS

On June 10, 2004, Applicant pled guilty to possession of crack cocaine and criminal conspiracy before the Honorable Casey Manning. The plea court sentenced him to five years suspended on the service of time served and three years probation on each charge to be ran concurrent. At the time of the plea, the defendant was given credit for *240 days of pre-trial detention*.

On July 30, 2010, the Honorable G. Thomas Cooper found that the defendant violated his probation and revoked the defendant's five year suspended sentence. On August 4, 2010, trial counsel, Jim May, filed a "motion to reconsider the probation revocation from July, 30th, 2010". The defendant was incarcerated at a South Carolina Department of Corrections (SCDC) facility between July 30, 2010 and February 4, 2011.

On February 4, 2011, Judge Cooper amended his sentence to the years by way of Applicant's motion to reconsider. In the order modifying the new sentence the Court gave Applicant "credit for any pre-revocation hearing detention time." The Court *also* noted that

Applicant "previously served 240 days of this sentence." The State did not appeal this order.

☐ cc: Box

☐ cc: Mail

☐ cc: Person

☒ cc: None *HW*

After the February 4, 2011 order was signed, SCDC reduced Applicant's sentence to 3 years, but denied him credit for the 240 days of pretrial detention. Had Applicant received credit for this time his lawful sentence would have already expired. Applicant now seeks post-conviction relief (PCR).¹

FILED
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JETHA L. CARRIGG
CLERK OF COURT

ARGUMENT

The testimony of Michael Stobbe at the evidentiary hearing, suggest that the SCDC views Applicant as having two separate sentences: 1) a theoretical maximum sentence; and 2) an incarceratory sentence. This position lead SCDC to the position that to awarding Applicant pretrial detention credit toward his incarceatory sentence would be awarding him credit twice; since he also received pretrial detention credit toward his theoretical maximum sentence. Applicant is bewildered by this over-thought hyper-technical position which seems to ignore the plain language of S.C. Code § 24-13-40 that requires SCDC to include pretrial detention time in its computation of time served.

When a sentence follows a probation revocation the amount of time served on that sentence is calculated from the beginning of the sentence, but a prisoner must still be credited with credit for time served prior to trial and sentencing. See S.C. Code § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing." (emphasis added)). The plain and unambiguous language² of the statute requires that SCDC include his pre-trial detention credit in "computing" his three year sentence.

¹ Applicant asserts that this claim is properly brought as a PCR action rather than an administrative action. See S.C. Code § 17-27-20 (a) (A person may institute a PCR action when "[his] sentence exceeds the maximum authorized by law" or "his sentence has expired"); see also, *Delahoussaye v. State*, 369 S.C. 522, 526, 633 S.E.2d 158, 160 (Ct. App. 2006) ("We agree with the PCR court that respondent's case encompasses a claim that his sentence has expired. Therefore, this matter was appropriately filed pursuant to the PCR statute.").

² In interpreting a statute, "[L]egislative intent should be found in the plain language of the statute itself. If a statute's language is plain and unambiguous and conveys a clear and definite

The February 4, 2011 sentencing sheet gives applicant a three year sentence. In computing the time served on that sentence, SCDC is required by S.C. Code § 24-13-40 to give "full credit against the sentence" for pretrial detention time. In Applicant's case, prior to trial and sentencing the applicant served 240 Days on his sentence. Applicant has been incarcerated since July 30, 2010 on the sentence. Applicant has served *at least* 725 days on a three-year sentence³. With credit for good time, Applicant would have already completed his sentence.

The Statute allows for two situations when denial of pretrial detention credit is appropriate: (1) when the pretrial time was served while he was an escapee; or (2) when the pretrial time was served while serving time for "*a second offense*." S.C. Code § 24-13-40. Applicant's situation is not one of the two situations where the statute allows denial of pretrial detention credit. See S.C. Code § 24-13-40.

In Applicant's case, SCDC believes it is in compliance with S.C. Code § 24-13-40 by giving applicant 240 days of credit toward his *theoretical* maximum sentence but disallowing credit toward his "incarceratory"⁴ sentence. However, there is nothing in the language of the statute to indicate that it should be selectively only applied to a theoretical maximum sentence. Instead the statute's broad language requires that SCDC use pretrial detention credit in computing time served in "every case."

meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." *Binney v. State*, 384 S.C. 539, 543, 683 S.E.2d 478, 480 (2009) (quoting *Gay v. Ariail*, 381 S.C. 341, 344, 673 S.E.2d 418, 420 (2009)). The Court should give words their "plain and ordinary meaning and will not resort to forced construction that would limit or expand a statute." *State v. Branham*, 392 S.C. 225, 708 S.E.2d 806, 810 (2011) (citing *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009)).

³ Three years at sixty-five percent time is around 712 days. However, Applicant has been gaining credit at a greater rate than sixty-five percent.

⁴ The testimony at trial seemed to indicate that SCDC policy dictates that every inmate has two sentences. There actual sentence or theoretical maximum sentence and their incarceration sentence.

In Sum, regardless of how SCDC views Applicants sentence or sentences, Applicant is serving a three year sentence. In "computing" time toward that three year sentence, SCDC is required to give full credit for the 240 days Applicant served prior to trial.

Respectfully submitted,



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shafferlawfirm@gmail.com

Columbia, South Carolina

This 7 day of December, 2011

FILED

2012 JAN 27 3 49

BETH A. CARRIG
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	Eleventh Judicial Circuit

2011-CP-32-3630

Norman J. Hayes, #127361	)	
	)	
Applicant,	)	
	)	
v.	)	MEMORANDUM IN OPPOSITION
	)	TO APPLICATION FOR PCR
State of South Carolina,	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 27, 2011. Because the Application raised a time sensitive sentence calculation issue, the Respondent (the State) agreed to schedule an expedited hearing in lieu of filing a formal Return. An evidentiary hearing into the matter was convened on November 30, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Tristan M. Shaffer, Esquire. The Respondent was represented by J. Benjamin Aplin of the South Carolina Department of Probation, Parole and Pardon Services and Kaelon May of the South Carolina Office of the Attorney General.

At the hearing, the Applicant called Michael Stobbe, Branch Chief for Release and Records Management at the South Carolina Department of Correction (SCDC), to testify on his behalf. Also before this Court were the records of the Lexington County Clerk of Court

regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections (SCDC); and the Applicant's records from the South Carolina Department of Probation, Parole, and Pardon Services (the Department).

The records before this Court indicate that the Applicant is presently confined in the Evans Correctional Institution with the South Carolina Department of Corrections. The Applicant was indicted by the grand jury for Lexington County for criminal conspiracy (2004-GS-32-1203) and possession of crack cocaine - first offense (2004-GS-32-1645). On July 10, 2004, he pled guilty to both charges and was sentenced by the Honorable Casey Manning to concurrent terms of five (5) years imprisonment suspended upon the service of time served [two-hundred and forty (240) days] and three (3) years probation for each charge. The Applicant did not appeal his convictions or sentences.

The supervision of the Applicant's probation case was transferred to Richland County, his county of residence. The Applicant was subsequently charged with various probation violations. On July 30, 2010, a probation violation hearing was convened in Richland County before the Honorable G. Thomas Cooper. The Applicant proceeded pro se and at the conclusion of the hearing the court revoked his probation and reinstated his five (5) year suspended sentence. On August 9, 2010, the Applicant served and filed a pro se notice of appeal with the South Carolina Court of Appeals; however, on August 4, 2010, five days **before** filing that notice of appeal, Richland County Assistant Public Defender James May filed a motion to be appointed as counsel, and a motion to reconsider the probation revocation on Appellant's behalf. On February 4, 2011, Judge Cooper convened a hearing on the pending motions. The Applicant was present and appeared with Mr. May. Mr. Aplin appeared on behalf of the State. Judge Cooper

granted the motion to appoint Mr. May as counsel and heard arguments on the motion to reconsider. After hearing from both parties the court granted the Applicant's motion to reconsider, reducing the length of his reinstated sentence to three (3) years, and terminating probation. The revocation order noted: "The defendant has previously served 240 days on this sentence. (split sentence time and/or prior partial revocation time)" On August 5, 2011, the Court of Appeals issued an order dismissing the Applicant's appeal from Judge Cooper's pre-amendment July 30, 2010, revocation order. On September 27, 2011, the Applicant filed this application for post-conviction relief (PCR) challenging the sentence calculation from his February 4, 2011, probation revocation.

ARGUMENT

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The State submits the Applicant's PCR Application should be denied and dismissed because he has failed to carry his burden of proof.

The South Carolina Code sets forth how the computation of time served by prisoners under sentences imposed by the courts of South Carolina shall be reckoned. It provides in part that: "In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing." S.C. Code Ann. § 24-13-40 (2007). In the Applicant's case, the original sentence was a "split sentence" of five (5) years imprisonment suspended upon the service of "time served" and three (3) years probation. The "time served" was the Applicant's pre-sentence detention of two hundred and forty (240) days.

and pursuant to Section 24-13-40, he was given credit for that time by being released directly from sentencing to probation. At the subsequent violation hearing, the probation revocation judge simply noted that the Applicant had previously served 240 days on this sentence, but did not, and should not have awarded double credit for the 240 days under Section 24-13-40 of the South Carolina Code, or any other provision. The "Form 9" certainly does not suggest otherwise. Indeed, it is a form created by the South Carolina Department of Probation, Parole and Pardon Services that was specifically designed for probation revocation hearings, with consultation from SCDC, and approval for use by Court Administration. It has gone through some minor modifications in recent years, but the section where the probation court notes "split sentence time and/or prior partial revocation time" has remained the same for over ten years. The "sentence" referenced in that section is the only "sentence" imposed in the case - the one by the original sentencing judge. The fact that a judge presiding over a subsequent probation violation matter may choose to re-instate less than the entire suspended sentence and terminate probation, does not modify the "sentence" imposed by the original sentencing judge. In fact, once the sentencing court's order became final, the probation judge would not be permitted to alter the sentence that was handed down. State v. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (2007); See also State v. Best, 257 S.C. 361, 373-74, 186 S.E.2d 272, 277-78 (1972) (noting that the court lacks subject matter jurisdiction to modify, change, or amend a sentence after adjournment of the term of court at which the court imposed the sentence).

The State submits the revocation of probation and reinstatement of a portion or all of the original sentence is not a new "sentence" in and of itself. In other words, this portion of the form is used to let SCDC know exactly how much time an inmate has already served on the original

sentence in an effort to ensure they correctly calculate how much time he has left to serve. In the case of a split, the active portion of the original sentence that has already been satisfied by the defendant is always noted here. By way of example, if a defendant got a five (5) year sentence suspended to two (2) years imprisonment and five (5) years probation, and later was facing a probation revocation, the Form 9 should note that "The defendant has previously served 2 years on this sentence." If the same defendant also had a prior partial revocation of two (2) months, the Form 9 should note that "The defendant has previously served 2 years and 2 months on this sentence." In the Applicant's case, it appears the Form 9 simply acknowledges the 240 days he previously served on the five (5) year original sentence. It does not award an additional 240 days to be taken off the three (3) year re-instated portion of the five (5) year sentence. Therefore, the State submits that the Applicant has failed to carry his burden of proof in this action and that the application must be denied and dismissed.

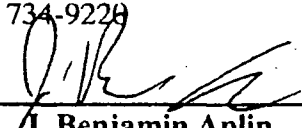
CONCLUSION

Based on all the foregoing, the State submits that the Applicant has not established any grounds that would require this court to grant his application. Therefore, this application for post-conviction relief should be denied and dismissed with prejudice.

Respectfully submitted,

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Assistant Chief Legal Counsel

South Carolina Department of
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(803) 734-9220

BY: 

J. Benjamin Aplin
Attorney for Respondent

Columbia, South Carolina
January 3, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 FILED) THE ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON)

2012 JAN 27 3:09

2011-CP-32-3630

Norman Haycs

BETH A. CARRIG

Applicant,

REPLY TO THE STATE'S
 MEMORANDUM IN OPPOSITION TO
 POST CONVICTION RELIEF

vs.

STATE OF SOUTH CAROLINA

Respondent.

In its Memorandum in Opposition to Post Conviction Relief, the primary¹ rational given for denying Applicant credit for his pretrial detention is as follows:

"In the Applicant's case, the original sentence was a 'split sentence' of five (5) years imprisonment suspended upon the service of time served and three (3) years probation. The 'time served' was the Applicant's pre sentence detention of two hundred and forty (240) days, and pursuant to section 24-13-40, he was given credit for that time by being released directly from sentencing to probation."

Applicant admits original sentence required him to complete either of the following: (Outcome-1)²

Applicant complete time served *and* three years probation; *or* (Outcome-2) face up to five years imprisonment *as calculated pursuant to S.C. Code § 24-13-40*. However, this argument does not support the State's position.

¹ This appears to be the State's only response to the argument set forth in Applicant's memorandum in support of post conviction relief. The State also attempts to address other issues which were raised by Applicant during the hearing such as: whether the form 9 constitutes an order demanding credit for pretrial detention; or whether the reduction constituted a change in the sentence. Although Applicant would like to preserve these arguments as *alternative* grounds for relief, Applicant's primary argument is that S.C. Code § 24-13-40 requires the pretrial detention credit be given toward Applicant's three year sentence.

² Outcome-1 is the split sentence option. Outcome-2 is what happens if he fails to complete the split sentence.

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Superficially, it appears that the State has a strong argument by averring that since Applicant received credit toward *outcome-1* he is not entitled to additional credit toward *outcome-2*. However, even if a defendant does not complete probation he is still entitled to pretrial detention credit toward *outcome-2*. See S.C. Code § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing." (emphasis added)). When Applicant's *outcome-2* was a full revocation³, SCDC gave Applicant pretrial detention credit toward his five year sentence, therefore clearly SCDC acknowledges that S.C. Code § 24-13-40 demands pretrial detention credit be awarded to *outcome-2* when a split sentence, *option-1*, is not completed. Yet, *inexplicably*⁴ SCDC changes its application of S.C. Code § 24-13-40 when *outcome-2* is something less than a full revocation.

If SCDC applied the same interpretation of S.C. Code § 24-13-40 that it is using in Applicant's case, to defendants with full probation revocations from split sentences it would lead to longer sentences than authorized by law. See S.C. Code § 24-21-460 ("In probation revocation cases the probation court may "require [the probationer] to serve all or a portion *only* of" the original sentence. (emphasis added)). For example, had Judge Cooper refused to reconsider in February of 2011, and SCDC applied S.C. Code § 24-13-40 to Applicant's split sentence *as it is now*, the following hypothetical would result:

Applicant received a 5 year sentence suspended upon a split sentence of 240 days (time served) and 3 years probation. Applicant failed to complete the probation so his probation was revoked in full. He would then receive a 5 year sentence but since, *under the State's current theory*, Applicant already received pretrial detention credit toward the split sentence that pretrial detention time would not reduce his 5 year sentence.

³ Prior to the February 2011 reconsideration.

⁴ After a thorough search, Applicant has not found a statute that supports this change in position. Nor has the State offered any explanation for its different application of S.C. Code § 24-13-40 between partial and full revocation.

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However, Michael Stobbe testified that prior to reducing his sentence to a partial revocation, Applicant's 5 year sentence was reduced by his pretrial detention credit, as it should have been pursuant to S.C. Code § 24-13-40.

Using S.C. Code § 24-13-40 and S.C. Code § 24-21-460 to determine the correct result.

S.C. Code § 24-21-460 requires the following:

"Upon such arrest the court, or the court within the venue of which the violation occurs, shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence and shall proceed to deal with the case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed. Should only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect and the defendant may again, from time to time, be brought before the circuit court so long as all of his sentence has not been served and the period of probation has not expired."

On February 4, 2011, Judge Cooper reconsidered his July 31, 2010 decision and ordered that Applicant serve 3 years and terminate Applicant's probation. If Judge Cooper "proceed to deal with the case *as if there had been no probation or suspension*"⁵, then Applicant's three year term of incarceration should be treated as any other sentence for the purpose of time calculation. See S.C. Code § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing." (emphasis added)). Although § 24-21-460 allows for remainder of sentence to remain in full effect in a partial probation revocation, this only applies if "the period of probation has not expired." S.C. Code § 24-21-460.

In sum, the State has no authority or justification for applying S.C. Code § 24-13-40 differently in the case of a partial revocation from a split sentence and a full revocation from a split sentence. Moreover, the plain language of S.C. Code § 24-13-40 and S.C. Code § 24-21-460,

⁵ See § 24-21-460 (emphasis added).

demands that pretrial detention credit be awarded to all sentences including partial probation revocations when probation is terminated.

Respectfully submitted,



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Columbia, South Carolina

This 19th day of January, 2012

FILED

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CLERK OF COURT
JAN 27 2012

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Norman J. Hayes, #127361

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
Eleventh Judicial Circuit

2011-CP-32-3630

ORDER OF DISMISSAL

RECEIVED

FEB 03 2012

A. PROCEDURAL HISTORY

LEGAL - DPPPS

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 27, 2011. Because the Application raised a time sensitive sentence calculation issue, the Respondent (the State) agreed to schedule an expedited hearing in lieu of filing a formal Return. An evidentiary hearing into the matter was convened on November 30, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Tristan M. Shaffer, Esquire. The Respondent was represented by J. Benjamin Aplin of the South Carolina Department of Probation, Parole and Pardon Services and Kaelon May of the South Carolina Office of the Attorney General.

At the hearing, the Applicant called Michael Stobbe, Branch Chief for Release and Records Management at the South Carolina Department of Correction (SCDC), to testify on his behalf. Also before this Court were the records of the Lexington County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections (SCDC); and the Applicant's records from the South Carolina Department of Probation, Parole, and Pardon Services (the Department). Following the hearing, this Court

24

granted the Applicant's request to submit post-hearing memoranda in support of their respective positions. On December 7, 2011, the Applicant submitted a "Memorandum in Support of Post Conviction Relief" and on January 5, 2012, the State filed a "Memorandum in Opposition to Application for PCR." On January 19, 2012, the Applicant submitted a Reply Memo.

The records before this Court indicate that the Applicant is presently confined in the Evans Correctional Institution with the South Carolina Department of Corrections. The Applicant was indicted by the grand jury for Lexington County for criminal conspiracy (2004-GS-32-1203) and possession of crack cocaine - first offense (2004-GS-32-1645). On July 10, 2004, he pled guilty to both charges and was sentenced by the Honorable Casey Manning to concurrent terms of five (5) years imprisonment suspended upon the service of time served [two-hundred and forty (240) days] and three (3) years probation for each charge. The Applicant did not appeal his convictions or sentences.

The records further indicate that supervision of the Applicant's probation case was transferred to Richland County, his county of residence. The Applicant was subsequently charged with various probation violations. On July 30, 2010, a probation violation hearing was convened in Richland County before the Honorable G. Thomas Cooper. The Applicant proceeded pro se and at the conclusion of the hearing the court revoked his probation and reinstated his five (5) year suspended sentence. On August 9, 2010, the Applicant served and filed a pro se notice of appeal with the South Carolina Court of Appeals; however, on August 4, 2010, five days **before** filing that notice of appeal, Richland County Assistant Public Defender James May filed a motion to be appointed as counsel, and a motion to reconsider the probation revocation on Appellant's behalf. On February 4, 2011, Judge Cooper convened a hearing on the pending motions. The Applicant was present and appeared with Mr. May. Mr. Aplin

appeared on behalf of the State. Judge Cooper granted the motion to appoint Mr. May as counsel and heard arguments on the motion to reconsider. After hearing from both parties the court granted the Applicant's motion to reconsider, reducing the length of his reinstated sentence to three (3) years, and terminating probation. The revocation order noted: "The defendant has previously served 240 days on this sentence. (split sentence time and/or prior partial revocation time)" On August 5, 2011, the Court of Appeals issued an order dismissing the Applicant's appeal from Judge Cooper's pre-amendment July 30, 2010, revocation order. On September 27, 2011, the Applicant filed this application for post-conviction relief (PCR) challenging the sentence calculation from his February 4, 2011, probation revocation.

B. ALLEGATIONS

In his Application for PCR, the Applicant alleges that he is being held in custody unlawfully for the following reason:

That his "sentence exceeds the maximum authorized by law" or "his sentence has expired" because he has not been given full credit against his probation revocation sentence for 240 days of time served prior to trial.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed all of the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In a post-conviction relief action, the Applicant has the burden of proving the allegations

in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court finds the Applicant's PCR Application should be denied and dismissed because he has failed to carry his burden of proof. The South Carolina Code sets forth how the computation of time served by prisoners under sentences imposed by the courts of South Carolina shall be reckoned. It provides in part that: "In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing." S.C. Code Ann. § 24-13-40 (2007). In the Applicant's case, the original sentence was a "split sentence" of five (5) years imprisonment suspended upon the service of "time served" and three (3) years probation. The "time served" was the Applicant's pre-sentence detention of two hundred and forty (240) days, and pursuant to Section 24-13-40, he was given credit for that time by being released directly from sentencing to probation. This Court finds that at the subsequent violation hearing, the probation revocation judge simply noted that the Applicant had previously served 240 days on this sentence, but did not, and should not, have awarded double credit for the 240 days under Section 24-13-40 of the South Carolina Code, or any other provision. The "Form 9" certainly does not suggest otherwise. Indeed, this Court finds it is a form created by the South Carolina Department of Probation, Parole and Pardon Services that was specifically designed for probation revocation hearings, with consultation from SCDC, and approval for use by Court Administration. This Court takes judicial notice that the "Form 9" has gone through some minor modifications in recent years, but the section where the probation court notes "split sentence time and/or prior partial revocation time" has remained the same for over ten years. This Court finds that the "sentence" referenced in that section is the only "sentence" imposed in the case - the one by the original sentencing judge. The fact that a judge presiding over a subsequent probation violation matter may choose to re-instate less than the entire suspended sentence and terminate

probation, does not modify the "sentence" imposed by the original sentencing judge. In fact, once the sentencing court's order became final, the probation judge would not be permitted to alter the sentence that was handed down. State v. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (2007); See also State v. Best, 257 S.C. 361, 373-74, 186 S.E.2d 272, 277-78 (1972) (noting that the court lacks subject matter jurisdiction to modify, change, or amend a sentence after adjournment of the term of court at which the court imposed the sentence).

This Court finds that under § 24-13-40, in the case of a split sentence, time served prior to trial should not be used to calculate the amount of time a probationer must serve on a reinstated sentence, because the pretrial detention time was already awarded to satisfy the time served portion of the split sentence. Indeed, this Court finds that the revocation of probation and reinstatement of a portion or all of the original sentence is not a new "sentence" in and of itself. In other words, this portion of the form is used to let SCDC know exactly how much time an inmate has already served on the original sentence in an effort to ensure they correctly calculate how much time he has left to serve. In the case of a split sentence, the active portion of the original sentence that has already been satisfied by the defendant is typically noted here. By way of example, if a defendant got a five (5) year sentence suspended to two (2) years imprisonment and five (5) years probation, and later was facing a probation revocation, the Form 9 should note that "The defendant has previously served 2 years on this sentence." If the same defendant also had a prior partial revocation of two (2) months, the Form 9 should note that "The defendant has previously served 2 years and 2 months on this sentence." This Court finds that in the Applicant's case, it appears the Form 9 simply acknowledges the 240 days he previously served on the five (5) year original sentence. It does not award an additional 240 days to be taken off

the three (3) year re-instated portion of the five (5) year sentence. Therefore, this Court finds that the Applicant has failed to carry his burden of proof in this action and that the application must be denied and dismissed.

D. CONCLUSION

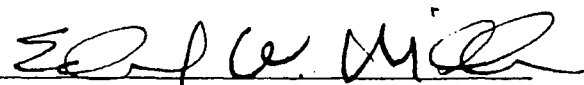
Based on all the foregoing, this Court finds and concludes that the Applicant's allegations are unsubstantiated by the record or the testimony presented. The Applicant has failed to carry his burden of proving that his sentence has expired or that he is otherwise being held in custody unlawfully. For all of these reasons, this Court finds that this application for PCR must be denied and dismissed with prejudice.

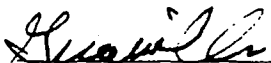
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of January, 2012.


The Honorable Edward W. Miller
Presiding Judge of the Eleventh Circuit

, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Eleventh Judicial Circuit

2011-CP-32-3630

COPY

Norman J. Hayes, #127361)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

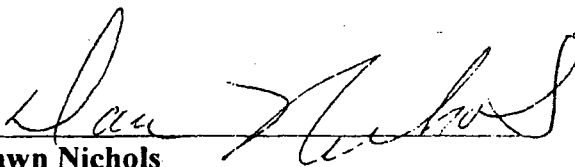
CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Administrative Assistant, hereby certify that this 6th day of February, 2012, I served the following documents:

1. Order; and
2. Certificate of Service
- 3.

by first class mail, postage prepaid as follows.

Tristan Shaffer, Esquire
PO Box 176
Chapin, South Carolina 29036


Dawn Nichols**Executive Administrative Assistant**

South Carolina Department of Probation, Parole and Pardon
Services

P.O. Box 50666

Columbia, South Carolina 29250

(803) 734-9220

Columbia, South Carolina
February 6, 2012

ARREST WARRANT

G-44-53-37 H-294024
00318096 H294024

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CITY OF WEST COLUMBIA

THE STATE

against

NORMAN J. HAYES

Address: [REDACTED]

CAYCE SC 29033

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 600 Weight: 225

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI#: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: TONES, MARK

Offense: POSSESSION WITH INTENT TO

DISTRIBUTE CRACK Offense Code LESS THAN

Code/Ordinance Sec. 44-53-375 (B)(1) 112

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 law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant NORMAN J. HAYES

on 10-13-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CITY OF WEST COLUMBIA

Personally appeared before me the affiant E. M. J. JAMES who

being duly sworn deposes and says that defendant NORMAN J. HAYES

did within this county and state on 10/12/03 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CITY OF WEST COLUMBIA)

in the following particulars:

DESCRIPTION OF OFFENSE: G-44-53-375 (B)(1)

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE LESS THAN 10 GRAMS

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:

IN THAT ON OR ABOUT OCTOBER 12, 2003 WHILE IN THE 300 BLOCK OF MARBLE STREET LOCATED IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE NORMAN J. HAYES DID HAVE IN HIS POSSESSION A QUANTITY OF CRACK COCAINE MORE THAN ONE GRAM LESS THAN TEN GRAMS; ALL OF WHICH CONSTITUTES THE CRIME OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE LESS THAN 10 GRAMS AND IS IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON AN INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

Sworn to and subscribed before me)
on 10/13/03)

Signature of Affiant

Affiant's Address 1053 CENTER ST.

Signature of Issuing Ministerial Recorder

Ministerial Recorder's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CITY OF WEST COLUMBIA

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 10/12/03 defendant NORMAN J. HAYES

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

☐ County/ ☒ Municipality of CITY OF WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE LESS THAN 10 GRAMS

Now, therefore, 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.

Signature of Issuing Ministerial Recorder

Judge's Address 1053 CENTER STREET

WEST COLUMBIA SC 29169

Signature of Issuing Ministerial Recorder

Ministerial Recorder's Telephone 794-0721

Judge Code: 6415

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

WCPD
Jones, Mark

DOCKET NO. 04-GS-32-1645

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2004

THE STATE

vs.

Norman J Hayes

A-2003-32-02043

2/24/2004 3:59 PM

ARREST WARRANT NUMBER

H294024

ACTION OF GRAND JURY

TRUE BILL

Dwan Z Batton
Foreperson of Grand Jury
Date: 4/5/04

VERDICT

Foreperson of Petit Jury

Date:

pls to poss crack

CDR# 0112

Indictment for

Possession with Intent to Distribute Crack
Cocaine 1st Offense
§44-53-375(B)(1)

DONALD V. MYERS, SOLICITOR

02 5 years

Plan to
Possession of
Crack

Negotiated

5 years suspended
on 90 days
credit 90 days
with 3 years
probation

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession with Intent to Distribute Crack Cocaine
COUNTY OF LEXINGTON	)	1st Offense
		§44-53-375(B)(1)

At a Court of General Sessions, convened on April 2004, the Grand Jurors of Lexington County present upon their oath:

That Norman J Hayes did in Lexington County on or about October 12, 2003, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, posses with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375(B)(1), Code of Laws of South Carolina, 1976, as amended. Such being the first offense.

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


 ASSISTANT SOLICITOR

NOV 07 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON
STATE VS.NORMAN J HAYESAKA: _____
Race: [REDACTED] Sex: M Age: 36
DOB: [REDACTED] SS#: [REDACTED]
Address: _____
City, State, Zip _____
DL# _____ SID# SC00462458

INDICTMENT/CASE#:

2004 -GS- 32 - 1645
A/W#: 14-294024
Date of Offense: 10-12-03
S.C. Code §: 44-53-373(B)(1)
CDR Code #: 011012☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession of Crackin violation of § 44-53-373 of the S.C. Code of Laws, bearing CDR Code # 011012☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David Sh. M. M.
SolicitorNorman Hayes
DefendantW. A. Mathew
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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 3 days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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. 240 days

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$100.00
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$225.00

Thomas H. Comerford
Clerk of Court/ Deputy ClerkCourt Reporter: R.

PTUP

_____ days/hours Public Service Employment

Obtain GED

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: Probation transfer toRichard Co.☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE: W. A. MathewJudge Code: 011012Sentence Date: 6-10-04

A TRUE COPY