

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

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APPEAL FROM RICHLAND COUNTY

SC SUPREME COURT

JAMES R. BARBERY III, CIRCUIT COURT JUDGE

Appellate Case No. 2016-060146

(Filed 6-10-2016)

Trial Court No. 2006CP4002795

Isiah James, Jr., Petitioner,

vs.

South Carolina Department of Probation,
Parole and Pardon Services (SCDPPPS), Respondent

PETITION FOR WRIT OF CERTIORARI
TO
SOUTH CAROLINA COURT OF APPEALS

ISIAH JAMES, JR., 096883
WCI, 1C 6T, 4340 Broad River Road
Columbia, South Carolina 29210

Other Counsel of Record:

Tommy Evans, Jr.
General Counsel
POB 50666
Columbia, SC 29250

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CERTIFICATE OF PETITIONER

James hereby certifies that the petition for rehearing was made and finally ruled on by the South Carolina Court of Appeals' panel on 6-10-16.

QUESTION(S) PRESENTED

- I. DID THE COURT OF APPEALS ERR HOLDING PETITIONER IS NOT AGGRIEVED BY THE CIRCUIT COURT'S ORDER?
- II. WHETHER THE COURT OF GENERAL SESSIONS FOR SUMTER COUNTY (June 1979 Term) HAD POWER (JURISDICTION) TO CONVICT AND SENTENCE PETITIONER FOR ARMED ROBBERY?

STATEMENT OF THE CASE

There was the 12-14-78 arrest of petitioner who was charged and indicted for two (2) counts of murder and armed robbery; after pretrial proceeding(s) James entered guilty pleas to armed robbery and two (2) counts of voluntary manslaughter in Sumter County. The [Taney] Court imposed 30, 30 and 25 year sentence consecutively. James became eligible for parole release on or about 2-17-88; it was disapproved. He made subsequent application(s) for parole release thereafter.

When he was denied parole release in March 2001, he brought this action [appeal] before the Administration Law Court [ALC] raising the claims which include the JAMES-Cooper claim or issue. The ALC issued an Order on 5-19-05; it was timely appealed to the circuit court. The circuit court conducted an 8-31-11 hearing where it entertained respondent's motion to dismiss; James presented all issues to the circuit court, including the jurisdictional issues set forth above herein by question.

The circuit court issued an order granting SCDPPPS's motion to dismiss on appellate jurisdiction ground; he appealed to South Carolina Court of Appeals. The court of appeals issued unpublished opinion no 2012-UP-503 (filed 9-5-12) [see also 2012 WL 1086239, App. Cas. No. 2011-199967]. Petitioner filed a timely petition for rehearing; the court's panel ruled on the petition for rehearing on 12-5-12; he petitioned this Court on petition for writ of certiorari - the High Court issued the 5-14-14 Memo Op. No. 2014-MO-012 which granted certiorari, reversing the court of appeals' decision dismissing James's 2011 appeal

That affirmed the circuit court's 2011 order of dismissal. The appeal was remanded to the [BARBER] Circuit Court; he conducted the 10-6-14 hearing and granted the Cooper claim but ignored the jurisdictional issue

set forth above herein, After there was receipt of the 12-5-14 Order, petitioner filed a timely notice of appeal to this court; the appeal was subsequently transferred to the court of appeals; the court of appeals issued 3-1-16 Order of Dismissal. Petitioner filed a timely petition for rehearing ~~to the court's~~ panel denied the petition for rehearing on 6-10-16. [See App. p. 4].

Argument(s)

I. THE COURT OF APPEALS ERRED HOLDING "APPELLANT IS NOT AGGRIEVED BY THE CIRCUIT COURT'S ORDER". (APP. p. 1)

The court of appeals erred holding "Appellant is not aggrieved by the circuit court's order"; thereby issuing 3-1-16 Order of Dismissal. Although there was a timely petition for rehearing with suggestion rehearing en banc; the court's panel ignored what James pointed thereto where the case (appeal) was before the court in 2012 WL 10862739 and the jurisdictional issue was raised and the court's panel ruled under 2012-UP-503 concerning it; he stated herein on remand that he did not abandon the claim. *State v. Gentry*, 610 SE2d 494, (2005) ("issues related to subject matter jurisdiction may be raised at any time")

Moreover, "The lack of subject matter jurisdiction may not be waived, even by consent of the parties, ... by this Court." *Ibid.* In *Gentry* the High Court quoted United States Supreme Court's precedent stressing:

"This latter concept of subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. ... 610 SE2d —

This is the same aspect James has, will present to the Court. See Rule 4(b) of South Carolina Rules of Criminal Procedure [SCRCrP]. It follows, the court of appeals erred by prohibiting briefing and appeal on the jurisdictional claim(s) and going contrary to the Rule of Law.

II. THE (Laney) COURT OF GENERAL SESSIONS (JUNE 1979 TERM) DID NOT HAVE [POWER] JURISDICTION TO CONVICT AND SENTENCE JAMES FOR ARMED ROBBERY

The Court of General Sessions for Sumter County did not have power to convict and sentence petitioner on 6-18-79 for numerous reason(s) and going against the Rule(s) of Law(s). Rule 60 of Circuit Court Rules of Practice [CCRP] was in most control and effect in the 1970's. (*Cook v. Taylor*, 252 SE2d 923 (1978)) ("See Rule 60 of the Circuit Court Rules") (*f* *State v. Culbert*, 316 SE2d 681 (1984) (for a discussion of could a circuit court rule be jurisdictional vs. manda-

atory) See also Edward D.W. Boby Girl B, 2015-MO-022, 2015 WL 1881188

which points or refers to circuit court's judge's power, "If upon such subsequent motion any order be made, it shall be void." Rule 4(b) contains, expresses and sounds in mandatory language "shall" and emphasizes stress jurisdiction "void"; See Simmon v. State, 411 SE2d 455 (1993) ("A sentence imposed by a court without jurisdiction is void.") There was the 3-26-79 arraignment on the homicide offense(s) [see indictment no. 79GS43-

At the 6-1-79 pre-trial motions bearing the record reveals,
"The defendants Maurice Mack and Isaiah James were indicted on Indictment Numbers 79GS43-139 and 140, respectively, for two counts of murder as to each indictment." p. 4 ll. 1-3

The record shows that the [Finney] Court adhered to the rule of law, law of the case doctrine. Cook v. Taylor supra; but see Flexon v. PHC Jasper, Inc., 776 SE2d 397 (S.C.App. 2015) ("closely related to the doctrines of claim and issue preclusion is the doctrine of law of the case, which holds that a decision on an issue of law made at one stage of the case becomes binding precedent to be followed in subsequent stages of the same litigation" Id at 403. See also Atkins v. Wilson, 2016 WL 912671 (Ct. App.) [citing U.S. v. Aramony, 166 F.3d 655, 661 (CA4 1999)]. There was the adherence, ruling(s) or holding(s) of the law of the case doctrine by the 2nd circuit [Finney] court judge from more than one point of view where the court ruled on "Brady" discovery motion p. 6 ll. 22 and there was the severance denial in State v. Maurice Mack et al. (See Davis v. Parkview Apartments, 762 SE2d 535, 543 (2014). (discovery establishes the law of the case)

It is noteworthy important to view the State (government) did not appeal any/all the Finney Court's decisions/rulings. State v. Amerson, 428 S.E2d 871 873 (1993) ("Appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by evidence and not clearly wrong or controlled by error of law.") See also State v. Hewins, 760 SE2d 814 819, 824 (2014) The doctrine(s) or teaching(s) of res judicata and/or collateral estoppel attached to State v. Mack et al.'s case, the record shows further:

BY SOL. McLEOD: I might point out, Judge, that the list that he is talking about, the information for his defense in the armed robbery case, the case has been called and will be called as Murder. p. 5 ll. 1-4.

Even though the State (government) had already secured indictment (#79-6543-141) [armed robbery] true billed at the March 1979 term [or perhaps

It was an illegal, unlawful term of court as the reason why it did not surface at the 3-26-79 arraignment. 28 C.J.S. Court § 149 comparison set forth, "The law of the case, however, is distinct from res judicata, in that the law of the case does not have finality of the doctrine of res judicata and applies only to one case whereas res judicata forecloses parties or privies in one case by what has been done in another case".

Furthermore, see State v. Blakely, 747 SE2d 29, at 35 (S.C. App. 2013) (for a discussion on South Carolina Mandatory Joinder Rule) and 22A C.J.S. § 560(a) (Criminal Law and Rule & Federal Rules of Criminal Procedure [FRCP] when James engaged the first APCR, the record showed:

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

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

How the [Finney] Court adhered or followed the rule of law, law of the case teaching and etc. concerning Mack, M. and violated it on petitioner in the same case points to cabotage, collusion and conspiracy by the parties who engaged it in 1979. (cf. State v. Blakely, 763 SE2d 622 (S.C. App. 2014). Even more, one would surmise if there were gray areas on what jurisdiction entails that the High Court clarified or explained exactly what jurisdiction is in In Re Estate of Hoover, 754 SE2d 875, 882 (2014): "the word 'jurisdiction' does not in every context connote subject matter jurisdiction, but rather is a word of many, too many meanings."

This court seemed to unify South Carolina law along with Federal law in Hoover when it declared:

Rather, [J]urisdiction is generally defined as 'the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all"

"Specifically, [J]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction, and (3) the court's power to render the particular judgment requested." Id at 882.

It is even more clearer; the [Finney] Court adhered and violated a number of rules of law(s) and Rule 60 (CPR) along with a number of controlling precedents which prohibited the Court from accepting guilty plea and imposing sentence on the armed robbery offense. The armed robbery part must be vacated, set aside forthwith. James maxed out the 60 year sentence in 2010. See SCD's record p. 11. He must be released immediately.

This 1 day of July 2016

J/ Leah James, # 096883

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Petition For Writ of Certiorari' to be mailed, postage prepaid, to the parties set forth below herein this 3 day of July 2016

Tommy Evans, Jr.
General Counsel
POB 50666
Columbia, SC 29250

Hon. Jenny A. Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Selavah James, Jr

The State of South Carolina

INDICTMENT FOR MURDER

County of SUMTER

At a Court of General Sessions, convened on the 19th day of March

1979, the Grand Jurors of Sumter County present upon their oath:

That one MAURICE MACK and one ISIAH JAMES, JR.

did with malice aforethought in Sumter County on or about the 25th day of October, 19 78, kill one Gary Cusamano

by means of shooting

CERTIFIED TRUE COPY OF ORIGINAL FILE

O. V. [Signature]

CLERK OF COURT SUMTER COUNTY SOUTH CAROLINA

and that the said Gary Cusamano

did die in Richland County as a proximate result thereof on or about the 26th day of October, 19 78

Against the peace and dignity of the State.

R. Kirk McLeod

R. Kirk McLeod Solicitor

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH Term, 1979

THE STATE

vs.

MAURICE MACK

ISIAH JAMES, JR.

Wable Pass. on to Maurice Mack. Pled guilty to Murder. [Signature]

INDICTMENT FOR

Armed Robbery,

~~Robbery and Grand Larceny~~

TRUED Bill
[Signature]
Foreperson of Grand Jury

McCAW PRINTERS, 2810 DEVINE ST., COLUMBIA, S. C. 29205

Witnesses

- Shirley L. Byrd Pamell
- L. Ted Owens, SLED
- J. L. Bonds, SLED
- Tom Henderson, SLED
- Carlton Medley, SLED
- Ira B. Pamell, Jr., SLED
- H.A. Mathis
- T.R. Mims
- W.L. Poulos
- J.A. Hyatt
- R.J. Foisey
- R.M. Jones

Verdict

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

ATTEST:

[Signature]
C. O. P. & G. S.

THE SENTENCE OF THE COURT IS THAT THE PRISONER

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

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

[Signature]
PRESIDING JUDGE

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

The State of South Carolina

County of SUMTER

INDICTMENT FOR ARMED ROBBERY,
~~ROBBERY WITH A DEADLY WEAPON~~

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

COUNT ONE—ARMED ROBBERY

That one MAURICE MACK and one ISIAH JAMES, JR.
did in Sumter County on or about the 25th day of October
19 78, while armed with a deadly weapon, to wit: .38 calibre pistol
feloniously take from the person in the presence of Gary Cusanano and Norman Guest Reames
by means of force or intimidation goods or monies of the said Gary Cusanano and Norman Guest Reames
such goods or monies being described: a quantity of Marijuana

COUNT TWO—ROBBERY

That
did in _____ County, on or about the _____ day of _____
19____, feloniously take from the person by presence of _____
by means of force or intimidation goods or monies of the said _____
such goods or monies being described: _____

COUNT THREE—LARCENY

That
did in _____ County on or about the _____ day of _____
19____, feloniously take and carry away the goods and monies of _____
of a value of _____
described: _____
with intent to deprive the owner permanently of such goods and monies.

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

R. Kirk McLeod
R. Kirk McLeod Solicitor

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

MOTIONS: June 1, 1979

MAURICE MACK and
ISIAH JAMES, JR.,

Defendants.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Mary S. Fuller

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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

June 1, 1979

APPEARANCES

For The State:

For The Defendants:

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

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

APPENDIX E

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

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

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

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

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

The following represents a true record of the proceedings.

3

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

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

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

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

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

11 BY ATTY. NEWSOM: Yes sir.

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

15 BY SOL. McLEOD: They have them, sir.

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

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

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

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

SUMMER, S.C. 1918

~~6-6~~
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1 on that and I'll think about it for a while. Do you wish to
2 be heard on that one, Solicitor? Criminal records of any
3 witnesses...

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

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

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

11 BY THE COURT: Yes sir?

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

18 BY THE COURT: The sentencing phase---

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

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

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

COURT REPORTER
SUMNER, S.C. 29130

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CERTIFICATE

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

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

Daisy M Moore

December 28, 1983

ORDER BY THE COURT
SUMTER, S.C. 29150

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

ISIAH JAMES, JR.)

VS)

STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

April 13, 1981
Sumter, South Carolina

B E F O R E:

HONORABLE JOHN W. HARTE, JR., Judge.

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

ROBERT W. BURKETT, Esq.,
Attorney for Mr. James

WILLIAM K. MOORE, Esq.,
Attorney for the State

RUTH F. HILL,
Circuit Court Reporter

PERGAD CO. - RAYONLE, N.J. 07008 - FORM 2094

1 to you the dilemma that you were in on one hand and the
2 relief which you might, which would be a certainty of not
3 going to the electric chair if you elected to plead guilty.
4 Q Was you or was you not at applicant's motion for
5 severance?

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

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

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

12 Q You didn't review the record?

13 A Not with regard to that motion.

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

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

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

CERTIFICATE

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

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

12
13 Ruth F. Hill
14

15 Manning, S. C.
16 June 19th, 1981
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PENGAD C.V. BAYORNE, N.J. 07601 - FORM 2094

CMTI100D

SCDC OFFENDER MANAGEMENT SYSTEM

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01/13/9

COMMITMENT APPLICATION
CONVICTION SUMMARY

SCDC # 94883
JAMES, JR., ISIAH -

SMITHKIM

CURR LOC: RIDGELAN

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY: UNCLASS

CURR SENT SERVING CAT: UNCLASS

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

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...

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

CM77335

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

01/13/99

SCDC ID: 00096883
JAMES, JR., ISIAH -

SMITHKIM
LOC: RIDGELAND
OFFENDER CATEGORY: UNCLASSIFIED
CURR SENT SERVING CAT: UNCLASSIFIED

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

PROJECTED COMPLETION DATES

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

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

PFKEYS: 5: HISTORY OF DATE CHANGES