STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Edward W. Miller, Circuit Court Judge

NORMAN J. HAYES,

RESPONDENT,

V.

THE STATE,

PETITIONER

APPELLATE CASE NO. 2015-002294

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE PRESENTED

Did the Court of Appeals erroneously reverse the PCR court's determination that a probationer who serves a split sentence is not entitled to receive double credit for time served prior to trial?

COUNTER-STATEMENT OF ISSUE PRESENTED

Whether the Court of Appeals correctly reversed the PCR court's denial of the Respondent's PCR application because the plain language of S.C. CODE ANN. § 24-13-40 and § 24-21-460 requires that pretrial detention credit be awarded to all sentences when probation is terminated, thereby preventing the State from applying partial revocations from a split sentence differently than full revocations from a split sentence?

COUNTER-STATEMENT OF THE CASE

Indictment and Plea Hearing[1]

On April 5, 2004, Respondent Norman J. Hayes was indicted by the Lexington County Grand Jury for criminal conspiracy and possession of crack cocaine.[2] App. 122; App. 129 – 130; General Session Case Nos. 2004GS3201645 and 2004GS3201203.

On June 10, 2004, Hayes pled guilty to criminal conspiracy and a lesser offense of possession of crack cocaine before the Honorable L. Casey Manning. App. 107; App. 131. Hayes was represented by Kenneth M. Mathews. Judge Manning sentenced Hayes to "five (5) years, provided that upon the service of time-served, plus costs and assessments as applicable, the balance is suspended with probation for three (3) years." The probationary sentences were to run concurrently. Hayes was given credit for pre-trial detention of two hundred and forty (240) days pursuant to S.C. CODE ANN. § 24-13-40. App. 107; App. 131.

Hayes did not appeal his guilty plea or sentence, and Hayes' probation case was transferred to Richland County, his county of residence. Hayes was subsequently charged with various probation violations. App. 122.

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[1] There are three appendices in this case. The 131-page Appendix filed with the Petition for Writ of Certiorari to Review the PCR Order of Dismissal is referred to herein as "App." The 2-page Supplemental Appendix, containing a clearer copy of the Amended Order from the probation revocation hearing is referred to herein as "Supp. App." The 29-page Appendix filed by Petitioner containing copies of the Court of Appeals' published opinion, the Petition for Rehearing, the Return to the Petition for Hearing, and the Order denying the Petition for Rehearing is referred to herein as "App. II."

[2] The remaining charges against Respondent were nolle prossed on the same day that Respondent pled guilty. General Sessions Case Nos. 2004GS3201201, 2004GS3201202, 2004GS3201646.

Probation Revocation Hearing

On July 30, 2010, a probation violation hearing was held before the Honorable G. Thomas Cooper. App. 1 – 7. Hayes appeared *pro se*,[3] and the State was represented by Probation Field Agent Marion Mack. Agent Mack misrepresented the extent of the violation, saying that Hayes had never reported and never paid anything.[4] App. 4, l. 3 – 5, l. 10. The only response allowed from Hayes was that he had paid two hundred dollars in 2005. App. 4, l. – 6, l. 6. As a result, Judge Cooper found that Hayes violated the conditions of his probationary sentence and "revoke[d] in full" the balance of Hayes' sentence. App. 5, ll. 12-19. Judge Cooper did note that Hayes had previously served 240 days on his sentence. App. 8 (Revocation Order July 30, 2010).

On August 4, 2010, unbeknownst to Hayes, Assistant Public Defender James H. May filed a motion to be appointed as Hayes's counsel and a motion to reconsider Hayes's probation revocation. App. 9 – 10. Five days later, Hayes filed a *pro se* notice of appeal with the South Carolina Court of Appeals on August 9, 2010.[5] App. 38.

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[3] Hayes indicated that he was represented by attorney Kenneth Matthews, but was not allowed any break or continuance to contact Mr. Matthews when his case was called and his attorney was not present in the courtroom. App. 3, l. 8 – App. 4, l. 15.

[4] Agent Mack failed to mention that Hayes had reported successfully for the entire three years of his initial probation, which was extended six months in order for Hayes to pay the outstanding monies owed. It was only during and after the six month extension that Hayes did not continue reporting. App. 16, ll. 1-15.

[5] On February 7, 2011, Appellate Defender Tristan M. Shaffer filed an initial brief of Appellant, arguing that Hayes was denied his right to counsel at the probation revocation hearing. App. 28 – 37. The Court of Appeals dismissed the appeal on August 5, 2011, as by that point the issue was moot because Hayes' Motion to Reconsider was granted. An Amended Revocation Order was entered on February 4, 2011, which reduced the reinstated sentence to three years with credit for time-served. App. 38 – 39.

Reconsideration Hearing

On February 4, 2011, a hearing on the motion for appointment of counsel and motion to reconsider Hayes' probation revocation was held before Judge Cooper. App. 11 – 25. Judge Cooper granted the motion to appoint Mr. May as counsel. Through counsel, Hayes explained that he successfully reported for his probation for three years and that his probation was extended an additional six months so that he could pay off the remaining fines and fees. He did not continue reporting during that additional six month period or meet his monetary obligations, of which eighty dollars was outstanding restitution. App. 15, l. 19 – 7, l. 3.

At the conclusion of the hearing, Judge Cooper reduced Hayes' reinstated sentence from five years to three years. App. 24, ll. 5-6. Judge Cooper issued an Amended Order which reflected the reduced sentence of three years. In the Amended Order, Judge Cooper again terminated probation. As he had done at the original revocation hearing, Judge Cooper gave Hayes "credit for any pre-revocation hearing detention time" and noted that Hayes had "previously served 240 days on this sentence." Supp. App. 1 (Amended Revocation Order Feb. 4, 2011).

Notably, the State did not appeal Judge Cooper's Amended Order, and thus, this Order became the law of Hayes' case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."). Pursuant to the Amended Order, the South Carolina Department of Corrections ("SCDC") reduced Hayes' sentence to three years, but denied him credit for the 240 days of pre-trial detention despite a court order to this effect. App. 56, ll. 2-3.

PCR Application and Evidentiary Hearing

On September 27, 2011, Hayes filed an application requesting post-conviction relief (PCR), alleging that his sentence exceeded the maximum authorized by law or that his sentence had expired

because he was not given full credit against his probation revocation sentence for 240 days of time served for pre-trial detention. App. 40 – 47. The State agreed to schedule an expedited evidentiary hearing in lieu of filing a formal return. An evidentiary hearing was held before the Honorable Edward W. Miller on November 30, 2011. App. 48 – 106. Hayes was represented by Tristan M. Shaffer, and the State was represented by John Benjamin Aplin, who was then the Assistant Chief Legal Counsel of the South Carolina Department of Probation, Parole, and Pardon Services, and former Assistant Attorney General Kaelon E. May. App. 48. Hayes and Michael John Stobbe, of the SCDC records department, testified at the evidentiary hearing. App. 52 – 95.

Stobbe testified that he was the branch chief of release and records management at the SCDC. App. 52, ll. 15-23. In sum, Stobbe's testimony was that the SCDC views Hayes as having two separate sentences: (1) a theoretical maximum sentence; and (2) an incarceration sentence. Based on this rationale, Stobbe maintained that the SCDC takes the position that awarding Hayes pre-trial detention credit toward his three-year incarceration sentence would be awarding Hayes credit twice since Hayes also received pre-trial detention credit toward his theoretical five-year maximum sentence. App. 52 – 92. Stobbe stated that Hayes could not get credit for the 240 days on the three-year sentence because Hayes "already has had that credit because the 240 days reduced the five years to 4 years, 125 days." App. 69, ll. 5-11.

Stobbe's testimony also indicated that when Judge Cooper revoked Hayes' probation in full and reinstated Hayes' sentence of five years, the SCDC did subtract the pre-trial detention time served of 240 days from the five-year sentence giving Hayes an incarceration sentence of four years and 125 days. App. 54, ll. 2-5. However, when Judge Cooper reduced Hayes' sentence to three years following the motion to reconsider, thus partially revoking Hayes' probation instead of revoking it in full, the SCDC was no longer willing to subtract the 240 days of pre-trial detention

from the three-year sentence. App. 55, l. 16 – 56, l. 3; App. 64, l. 16 – 65, l. 17. The PCR court also considered the post-hearing memoranda filed by PCR counsel and the State. App. 107 – 120.

Order of Dismissal

On January 30, 2012, Judge Miller ruled in his Order of Dismissal that "[Hayes'] PCR Application should be denied and dismissed because he has failed to carry his burden of proof." App. 121 – 127. The PCR court first found that Hayes' "original sentence was a 'split sentence' of five (5) years imprisonment suspended upon the service of 'time served' and three (3) years probation." According to the PCR court, the time served was Hayes' "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." App. 124.

Additionally, the PCR court found, "[A]t the subsequent violation hearing, the probation revocation judge simply noted that [Hayes] 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." App. 124. The PCR court also found, "The 'Form 9' certainly does not suggest otherwise." App. 124. The PCR court further found:

> 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.

App. 124 – 125.

Furthermore, the PCR court found 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 pre-trial detention time was already awarded to satisfy the time served portion of the split sentence." App. 125. The PCR court also ruled that "in [Hayes'] 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." App. 126.

PCR Appeal

Hayes appealed the Order of Dismissal. On October 15, 2012, Appellate Defender Dayne C. Phillips filed a Petition for Writ of Certiorari on behalf of Hayes to the Supreme Court. The case was transferred to the Court of Appeals pursuant to Rule 243(l), SCACR. The Court of Appeals granted the Petition for Writ of Certiorari and ordered briefing on June 18, 2014. Oral argument was held on May 4, 2015.

On July 29, 2015, the Court of Appeals issued a unanimous opinion, Hayes v. State, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015), reversing the PCR court's order of dismissal. App. II 1. On August 11, 2015, the State filed a Petition for Rehearing and Suggestion for Rehearing En Banc. App. II 8. Respondent filed his Return on August 24, 2015. App. II 17. The Court of Appeals denied the Petition for Rehearing on October 8, 2015. App. II 29.

Petitioner filed a Petition for Writ of Certiorari from the Court of Appeals on November 13, 2015. Respondent filed his Return to the Petition on February 22, 2016. On June 16, 2016, this Court issued an Order granting the petition for a writ of certiorari to review the decision of the Court of Appeals in Hayes v. State, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015).

The State filed its Brief of Petitioner on July 18, 2016. This Brief of Respondent follows.

ARGUMENT

The Court of Appeals correctly reversed the PCR court's denial of the Respondent's PCR application because the plain language of S.C. CODE ANN. § 24-13-40 and § 24-21-460 require that pretrial detention credit be awarded to all sentences when probation is terminated, thereby preventing the State from applying partial revocations from a split sentence differently than full revocations from a split sentence.

The Court of Appeals properly interpreted the statutory requirements related to credit for time-served and correctly applied the law to the facts of Hayes' case. The Court of Appeals found that "the PCR erred as a matter of law when it determined a probationer who receives a split sentence should not receive credit for time served prior to trial against a reinstated sentence 'because the pretrial detention time was already awarded to satisfy the time served portion of the split sentence.'" App. II 7. The Court properly held that S.C. CODE ANN. § 24-13-40 "does not make a distinction for split sentences" and that the plain language of the statue requires that "pre-trial detention time should apply against a probation revocation whenever a probationer receives a split sentence." App. II 7.

Hayes was originally sentenced to five years' imprisonment, suspended to time served and three years' probation. He was credited with 240 days of time served. App. 131 (Sentencing Sheet, June 10, 2004). At the time of Hayes' guilty plea, S.C. CODE ANN. § 44-53-375(A) (1993) provided: "A person possessing or attempting to possess less than one gram of ice, crank, or crack cocaine, as defined in Section 44-53-110, is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years and fined not less than five thousand dollars. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation

program."[6] Thus, five years was the maximum sentence that Hayes could have been sentenced to at the guilty plea hearing.

Hayes was revoked in full at the original revocation hearing, meaning that he had to serve the remaining four years and fifteen days, which is the five year suspended sentence less the 240 days already served. Judge Cooper realized at the reconsideration hearing that the revocation in full was undue, thus he reduced the reinstated portion of the suspended sentence by two years, from five years to three years. See State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950) ("While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice."). A simple review of the July 30, 2010 revocation order and the February 4, 2011 amended revocation order shows that the only substantive difference in the Orders is that Judge Cooper changed the time that Hayes "be required to serve" from five years to three years. In both Orders, Judge Cooper terminated the remainder of Hayes' probation and noted that Hayes "has previously served 240 days on this sentence." Compare App. 8 (Revocation Order July 30, 2010), with Supp. App. 1 (Amended Revocation Order, Feb. 4, 2011). Logically then, the time to be served by Hayes should have decreased by two years, as five minus three equals two. App. 11 – 24; Supp. App. 1 (Amended Revocation Order, Feb. 4, 2011). Despite what seems to be simple subtraction, the Department of Corrections managed to complicate the matter by only subtracting the 240 days of time-served from the five year revocation sentence but not from the three year revocation sentence. App. 64, ll. 20-23.

Petitioner argues that the Court of Appeals misapprehended the plain language of S.C. CODE ANN. 24-13-40 by holding that the statute requires the pre-trial detention time be applied against the

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6 The maximum sentence for possession of crack cocaine, first offense, was reduced to three years by the Omnibus Crime Reduction and Sentencing Reform Act of 2010. 2010 Act No. 273, § 38, eff. June 2, 2010.

probation revocation sentence whenever a probationer receives a split sentence. Brief of Petitioner, p. 9. Petitioner further contends that S.C. CODE ANN. § 24-13-40 carries a distinction, heretofore totally unappreciated, between a "sentence" imposed following a trial or a guilty plea and a "sentence" imposed following a revocation of probation:

> The ***Court of Appeals conflated the concepts of a plea judge's original sentence with a probation judge's revocation***. Section 24-13-40 deals with sentences. The only sentence given to Respondent is the five year total sentence imposed by the plea judge. The three year revocation is not a "sentence" under the under [sic] S.C. Code Section 24-13-40.

Brief of Petitioner, p. 9 (emphasis added).

Statutory interpretation is a question of law. See Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) (citing Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)). This Court is "free to decide a question of law with no particular deference to the circuit court." Id. at 524, 642 S.E.2d at 753. "A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself." State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008).

"The determination of whether to revoke probation in whole or in part rests within the sound discretion of the trial court." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006); S.C. CODE ANN. § 24-21-460. S.C. CODE ANN. § 24-13-40 provides:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, **(b) the commencement of the service of the sentence follows the revocation of probation,** or (c) the court shall have designated a specific time for the commencement of the service of the sentence, **the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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**, and may be given for any time spent under monitored house arrest.

> Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

(emphasis added).

There are three important components of S.C. CODE ANN. § 24-13-40 that are relevant to the present case. The first is the date from which time-served is calculated. Time-served is "calculated from the date of the imposition of the sentence." S.C. CODE ANN. § 24-13-40. When "the commencement of the service of the sentence follows the revocation of probation, . . . the computation of the time served must be calculated from the date of the commencement of the service of the sentence." S.C. CODE ANN. § 24-13-40. Here, the time served was 240 days, all of which was served prior to the date that the sentence was imposed.

Second, is a requirement that "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." S.C. CODE ANN. § 24-13-40 (emphasis added). That mandate directly follows the statute's reference to sentences imposed by the courts, a petitioner's filing of a notice of intention to appeal, service of sentences commencing after a revocation of probation, and the specific designation of time for the commencement of a sentence.

Lastly, there are only two exceptions whereby credit for time served pre-trial and sentencing is not given – (1) if the prisoner was an escapee from another penal institution at the time he was imprisoned, or (2) if the prisoner was already serving a sentence for an offense and awaits trial on a second offense. See S.C. CODE ANN. § 24-13-40. Neither of those two narrow exceptions apply here. Notably, there are no additional exceptions for if the defendant was given a split sentence or if a defendant's probation is partially revoked. Thus, the Court of Appeals correctly found that, under

the plain language of S.C. CODE ANN. § 24-13-40, a probationer who receives a split sentence must receive credit for time served prior to trial against a reinstated sentence. App. II 7.

Petitioner opines that the Court of Appeals' decision will lead to an absurd result in the event of multiple partial revocations. Petitioner argues that a probationer who is only partially revoked and continued on probation could receive double or triple credit if credit for time-served is given at each revocation hearing. Petitioner's hypothetical involves a defendant who served one year of pre-trial detention time and receives a sentence of five years suspended upon time served (one year) and five years probation. Petitioner avers that in the event of a partial one-year revocation, the Court of Appeals' opinion in Hayes would require credit for time-served of one year such that the defendant would not have to serve any additional time in the Department of Corrections because the one year time-served would be subtracted from the one year of partial reinstatement. Brief of Petitioner, p. 10.

Petitioner's hypothetical is flawed. First, a probation judge could certainly articulate his sentence in such a way as to make clear that the intention is for the defendant to serve an additional year of incarceration. While the Form 9 supplied by SCDPPPS may be inadequate, it is axiomatic that the statute takes precedence over an agency created form. See Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) ("Although a regulation has the force of law, it must fall when it alters or adds to a statute."). Second, Petitioner left out the essential information of whether the five year suspended sentence was the maximum sentence, as it was in Hayes' case. In a case like Hayes', if credit for time-served is not given at the probation hearing then his sentence becomes illegal, as he cannot be required to serve more than the five year maximum for the offense committed. On the other hand, if five years was not the maximum

sentence, it is arguable that the sentencing judge may not have released the defendant but for the time-served and intended that the full five years be "over the defendant's head."

Petitioner further ignores the reality that if a defendant in Hayes' position is not given credit for time-served at his first revocation, he may never been given credit for time-served if he is not ever revoked in full. In fact, in Hayes' case he was never given credit for the time-served because the probation judge **terminated his probation**. In order to effectuate the statutory requirement that credit be given for time-served, such credit must be given at the first revocation hearing. Thus, the Court of Appeals properly rejected SCDC's practice of withholding credit for time-served unless and until the defendant's probation is fully revoked, regardless of the termination of probation.

Petitioner further argues that the Court of Appeals misinterpreted the effect of the revocation order itself. In support of its position, Petitioner cited to an unpublished Court of Appeals opinion, Martin v. SCDC, Op. No. 2010-UP-367 (Ct. App. July 14, 2010) (Shearhouse Adv. Sh. No. 28 at 6). Brief of Petitioner, p. 11. This Court denied Respondent's Motion to Strike Petitioner's reference to Martin in its Petition for Writ of Certiorari. Though the Martin decision is unpublished and thus of no precedential value, it is also distinguishable from the present case. See Rule 268(d)(2), SCACR. In Martin, the defendant's suspended sentence of ten years was far below the maximum twenty-five year sentence that he could have received for second-degree arson. Thus, the failure to apply time-served to the revocation sentence would not have resulted in an illegal sentence like it did in the present case. Thus, the Court of Appeals' published opinion in Hayes does not conflict with its unpublished opinion in Martin.

Moreover, all of the sentencing orders in Hayes' case have instructed that Hayes be given credit for the 240 days of pre-trial detention. App. 131 (Sentencing Sheet, June 10, 2004); App. 8 (Revocation Order July 30, 2010); Supp. App. 1 (Amended Revocation Order, Feb. 4, 2011). In

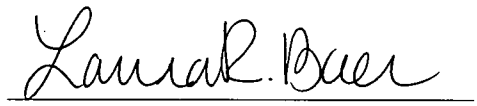
Tant v. South Carolina Dep't of Corr., this Court recognized that the Department of Corrections has a "duty to correct mistakes that may occur in recording an inmate's sentence," which will sometimes "resolve nothing more than a clear clerical error." 407 S.C. 334, 341, 759 S.E.2d 398, 401 (2014). However, "the reality [is] that an individual's freedom is implicated in these determinations." Id. This Court held that in determining the proper sentence, SCDC is confined to the face of the sentencing sheets absent ambiguity. Id. at 342, 759 S.E.2d at 402. "Ambiguity in a sentence is established the same way as it is established for contract terms or statutes, essentially where the language, and therefore the intent, is in some way unclear." Id. at 345, n. 4, 759 S.E.2d at 403, n. 4. Here, there was no ambiguity in the sentencing sheet, as it explicitly stated that Hayes was to receive credit for the time served of 240 days. Supp. App. 1 (Amended Revocation Order, Feb. 4, 2011). Assuming *arguendo* that Judge Manning's intentions were unclear, "[a]mbiguity or doubts relative to a sentence should be resolved in favor of the accused." Tant, 407 S.C. at 342, 759 S.E.2d at 402 (quoting State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971)). In this case, resolution in Hayes' favor required application of the 240 days of time-served to the three year reinstated sentence.

Both S.C. CODE ANN. § 24-13-40 and the sentencing orders themselves reveal that Petitioner was illegally held by the SCDC because he was entitled to pre-trial detention credit for those 240 days. Thus, the Court of Appeals properly reversed the PCR court and its opinion should be affirmed.

CONCLUSION

Based on the foregoing, Respondent Norman J. Hayes respectfully requests that this Court affirm the decision of the Court of Appeals.

Respectfully submitted,



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable Edward W. Miller, Circuit Court Judge

NORMAN J. HAYES,

RESPONDENT,

V.

THE STATE,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Respondent in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Norman J. Hayes, at 401 Westwood Avenue, Columbia, SC 29203, this 17th day of August, 2016.

Laura R. Baer

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2016.

Samantha Rugard (L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.