

**RECEIVED**

**SEP 13 2016**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM MARION COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-001631

Letron S. Davis, .....Respondent,

v.

State of South Carolina, .....Petitioner.

**MOTION TO AMEND APPENDIX AND HOLD DEADLINES IN ABEYANCE**

Pursuant to Rules 212(b) and 240 and of the South Carolina Appellate Court Rules, counsel for Petitioner moves this Court to allow the Appendix to be supplement with Respondent's parole records and to hold the deadlines in abeyance pending the Court's decision on this Motion. In support of this Motion, Respondent would present the following:

- I.
1. On July 28, 2014, Petitioner filed a Notice of Appeal in this case.
2. On January 9, 2015, Petitioner filed a Petition for Writ of Certiorari and the Appendix, asking this Court to grant review of the PCR Court's decision to grant Respondent's PCR on the basis he was **misadvised** that he would be parole eligible and would not be required to serve eighty-five percent of the actual term of imprisonment. (App. p. 67.) The PCR Court found that "it was uncontroverted that

the Department of Corrections is subjecting [Respondent] to service of eighty-five percent of his seven-year sentence.” (App. p. 70.)

3. At the time of his PCR hearing and the filing of the Notice of Appeal, Respondent was still incarcerated.
4. On April 21, 2015, Petitioner moved this Court to dismiss the appeal and reverse the PCR court based on Respondent’s release on parole. Petitioner argued the release date showed plea counsel’s advice as to Respondent’s parole eligibility was not erroneous. According to Respondent’s testimony, he believed—based on counsel’s advice—he would only serve sixty-five percent of his sentence before being paroled. (App. p. 28, l. 24-p.29, l. 13; p. 34, ll. 22-23; p. 35, ll. 13-19). If Respondent were to only serve sixty-five percent of his seven year sentence, as he testified was his understanding, he would be parole eligible after 1,660 days of incarceration. Respondent’s sentence start date was May 11, 2011. (App. p. 85). Therefore, under his understanding of his sentence, he would be parole eligible on November 26, 2015. With the motion to dismiss, Petitioner submitted a letter from the Department of Probation, Pardon, and Parole stating Respondent was actually paroled on October 9, 2014, having served less than sixty-five percent of his sentence.
5. Respondent opposed the motion to dismiss and this Court denied that motion on July 6, 2015.
6. Petitioner moves to admit Respondent’s parole records (attached as Exhibit A). The parole records reflect that Respondent was released to parole on October 9, 2014. The parole records are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” SCRE 201(b). And, this Court

may take judicial notice “at any stage of the proceeding.” SCRE 201(f); see also State v. Squires, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (this Court took judicial notice of that the process of infrared spectroscopy had gained general acceptance in the scientific community).

7. These parole records are relevant and pertinent material and should be included in the Appendix; as such, counsel moves this Court to allow the Appendix to be supplemented with this material.
8. To allow counsel to prepare a Brief of Petitioner that relates to the Appendix before the Court, counsel asks this Court to hold all deadlines in abeyance pending this Court’s decision on the Motion. Counsel requests the deadline for the Brief of Petitioner be set for thirty days following this Court’s decision on this Motion.

## II.

Counsel for Petitioner has contacted counsel for Respondent, and Respondent has indicated through counsel that he objects to amending the Appendix.

*Signatures on following page*

III.

WHEREFORE, it is respectfully requested that this motion be granted.

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 79834

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

By:   
ATTORNEYS FOR PETITIONER



## CERTIFICATE OF PAROLE

Know all men by these presents:

It having been made to appear to the South Carolina Department of Probation, Parole and Pardon Services that the offender mentioned below who was convicted of the offense(s) indicated below in said date(s) and in said county(ies) is eligible to be Paroled, and in that there is a reasonable probability that said prisoner WILL REMAIN AT LIBERTY WITHOUT VIOLATING THE LAWS, and it being the opinion of the said South Carolina Board of Probation, Parole and Pardon Services that the release of the prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied that the below mentioned offender will not become a public charge on release.

It is therefore ORDERED that the said prisoner be Paroled effective on the date indicated below pending good behavior under supervision subject to the specific conditions of Parole listed below until the expiration of this maximum sentence as indicated.

This Parole shall not prevent the delivery of the prisoner to the authorities of the Federal Government or any state otherwise entitled to his or her custody. In witness whereof, this Certificate bearing the approval of the South Carolina Board of Probation, Parole and Pardon Services is issued on the date below.

By Order of: South Carolina Board of Probation, Parole and Pardon Services

Offender/Prisoner's Name: DAVIS, LETRON S  
Parole Effective Date: October 9, 2014  
State Identification # (SID): 01270594  
SC Dept. of Corrections # (SCDC): 00348914  
Parole Ending Date: May 9, 2018

By:

Director of Parole Board Support Services

CDR	Offense(s)	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Expiration Date(s)
80	Burglary (Non - Violent) (After June 20, 1985) - Second degree	11GS3300476	12/6/2011	MARION	8/17/2015
3015 P	Manufacture, distribution, etc. of cocaine base, 2nd off.; Parolable if offense sentenced on or after 6/2/10	11GS3300228	12/6/2011	MARION	5/9/2018

### CONDITIONS OF SUPERVISION

### Additional Offenses or Notes Page 2

This Certificate shall not become operative until the following conditions are agreed to by the prisoner. Violation of any of these conditions may result in the immediate revocation of supervision.

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the date of my release or not later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.  
Please report to the office in the County of: **MARION** Phone: **(843) 423-2666**
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
- I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
- I shall pay a supervision fee as determined by the Department.
- I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.
- Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

### ADDITIONAL CONDITIONS:

- 03 Must attend Mental Health program for as long as they deem necessary (Anger Management).
- 15 Complete SPICE Program.

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.

Witness Signature

Date

10-9-14

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

Offender Signature

Date

10-09-2014

Residence: 2958 Cherrydale Road  
MARION, SC 29571

Created: 10/8/2014



South Carolina Department of Probation, Parole and Pardon Services  
Certificate of Parole

Page 2

Created: 10/8/2014

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Parole Effective Date: October 9, 2014  
State Identification # (SID): 01270594  
SC Dept. of Corrections # (SCDC): 00348914  
Parole Ending Date: May 9, 2018

CDR	Offense(s)	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Expiration Date(s)
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**ADDITIONAL CONDITIONS:**

**ADDITIONAL CONVICTIONS:**

Convictions Concurrent to: 11GS3300228

Concurrent Conviction Indictment Number: 11GS3300228

Concurrent Conviction Offense Description: Manufacture, distribution, etc. of cocaine base, 2nd off.; Parolable if offense sentenced on or after 6/2/10

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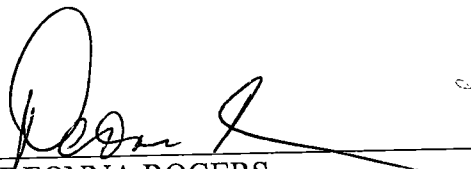
**CERTIFICATE OF SERVICE**

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

**Laura Ruth Baer, Esquire  
S.C. Commission on Indigent Defense  
PO Box 11589  
Columbia, SC 29211-1589**

This 13<sup>th</sup> day of September, 2016

  
DEONNA ROGERS  
LEGAL ASSISTANT



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SEP 13 2016

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

September 13, 2016

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

**RE: Letron S. Davis v. State of South Carolina**  
**Appellate Case No. 2014-001631**  
**Lower Court Case No. 2012-CP-33-379**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Motion to Amend Appendix and Hold Deadlines in Abeyance** in the above mentioned case.

Sincerely,

Johanna C. Valenzuela  
Senior Assistant Deputy Attorney General  
SC Bar #79834

JCV/dgr

cc: Laura R. Baer, Esquire