

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

NOV 23 2015

J. Ernest Kinard, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2015-001162

Derek S. Carter.....Appellant,

v.

South Carolina Department of Probation, Parole, and Pardon Services,.....Respondent.

RECORD ON APPEAL

Derek S. Carter, #275938, MB-27
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S.C. 29067
Appellant

Other Counsel of Record:

Tommy Evans, Jr.
Assistant General Counsel
S.C. Dept. of Probation, Parole,
and Pardon Services
2221 Devine St., Suite 600
Columbia, S.C. 29250
Attorney for Respondent

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2014-CP-40-03603

Derek S. Carter #275938,)

Plaintiff,)

vs.)

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

Defendant.)

TRANSCRIPT OF RECORD

March 5, 2015
Columbia, South Carolina

B E F O R E :

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

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

DEREK S. CARTER, PRO SE
Appearing for the Plaintiff

TOMMY EVANS, JR., ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 for the Department of Probation, Parole and Pardon
2 Services.

3 Mr. Carter is currently serving a sentence for
4 homicide by child abuse. And the Court -- as the
5 Court knows, because that sentence is a DP felony,
6 he will be subject to the community supervision
7 program. He will have to serve 85 percent of the
8 sentence.

9 He has filed a declaratory judgment action
10 basically stating that as a condition under the
11 statute you must consent to waiver of searches as a
12 part of the conditions of the actual program.

13 First of all, my argument is he lacks standing
14 to raise this before the Court because he is still
15 incarcerated. He is not under the program yet, so
16 the actual consent to waiver does not apply to him,
17 it only applies to individuals currently on the
18 program.

19 Under the Sea Pines case, it basically states
20 what a person must show the Court in order to prove
21 standing.

22 First of all, there has to be an injury that
23 the person must suffer. He is not suffering any
24 injury under that statute because he is not under
25 the program. He is not due to be released until

1 2026. That is 11 years from now. So, I mean, he
2 actually has no injury regarding the program.

3 There must be a connection between the injury
4 and the complaining conduct.

5 Actually -- like I said before, he has no
6 injury. And the actual conduct that the department
7 puts on individuals currently in the program have
8 nothing to do with him right now because he is not
9 a part of the program. He is currently still
10 incarcerated.

11 And the likelihood it will be redressed by a
12 favorable decision, even if you decided that it is
13 unconstitutional, it has no effect on him because
14 he is not a part of the program and it would have
15 nothing to do with him.

16 Another argument we would have is that, I
17 think he is arguing that we have violated ex post
18 facto because the actual statute was rewritten in
19 2010. He was convicted in 2001.

20 First, our argument on ex post facto is: One,
21 it is not a penile argument. It doesn't affect his
22 actual punishment. We are not asking the Court to
23 add more time on the sentence. And we didn't
24 change or ask the General Assembly to change the
25 actual law to make his sentence more harsh or make

1 him do more time in the Department of Corrections.
2 All we are doing right now is applying the
3 conditions as stated in the statute.

4 Also, Your Honor, according to the statute at
5 the time he did commit the offense in 2001, the
6 Department of Probation, Parole and Pardon Services
7 controlled the community supervision program, so we
8 had the right to add any conditions we feel
9 necessary, which part of it is the actual consent
10 to waiver of any search.

11 Also, under Stanley v. McDougall -- I'm sure
12 the Court is aware -- a person who has been deemed
13 to be an inmate on parole, if that person is on
14 parole, so it is subject to waiver of any Fourth
15 Amendment rights regarding to searches.

16 The statute has protection of a person. Staff
17 is subject to search without an actual search
18 warrant if that person is under supervision. We
19 cannot harass individuals. We must take names of
20 individuals being searched. We must prove that
21 that individual is being supervised. And, also,
22 any harassment that is brought up, SLED would
23 investigate and that officer must be disciplined.

24 So, therefore, it doesn't affect his
25 individual rights, and there is parameters that

1 will protect him from being harassed by the
2 department.

3 But, however, we would ask the Court to
4 dismiss the case because of lack of standing.

5 Also, it is not a validation of any
6 constitutional rights that we may impose because he
7 is currently under supervision once he has been
8 released under that program, which is part of the
9 conditions of that program.

10 Thank you.

11 THE COURT: And once you are in the program
12 you waive your constitutional rights to search,
13 seizures, and all that.

14 MR. EVANS: That is actually a condition of
15 the actual program. And there are other conditions
16 that you have to abide to that is a violation of
17 those constitutional rights. You cannot travel.
18 You have to get approval of where you are going to
19 live. You cannot basically congregate in places of
20 ill repute, like bars, and things like that. So
21 this is no different than any other conditions that
22 apply to a person under supervision.

23 But that person under supervision is not an
24 actual person that is like a free individual, they
25 are under supervision by the department. And once

1 they are placed in the program, then the department
2 deems what criteria you must follow.

3 And that criteria can be changed by the Court
4 if they wish to, if the person files the right
5 motion. However, our position is that it does not
6 apply to him right now because he is currently
7 incarcerated, he has nothing to do with the actual
8 program right now, Your Honor.

9 Thank you.

10 THE COURT: Okay. Well, Mr. Carter, you do a
11 good job of writing briefs. And I read it before I
12 came in here, because you sent me three or four
13 things.

14 MR. CARTER: I do my best, Your Honor.

15 Your Honor, I would respond first by drawing
16 your attention to the case I handed up, the Sunset
17 case.

18 THE COURT: Yes. That doesn't apply to you.
19 I read it.

20 MR. CARTER: It doesn't apply? Well, I was
21 looking at the statute under the Declaratory
22 Judgment Act, Your Honor. And I get what the
23 Defendant is saying about myself not being in the
24 community supervision program as of yet, but as the
25 statute says, incarceration and CSP are both in

1 tangent. They both become attached to my sentence
2 at the time of my plea.

3 But what the Defendant didn't say -- I would
4 like to hand up this copy of this letter. It is
5 essentially a letter written by Mr. Evans. And it
6 says that one of those conditions is that each
7 participant must consent to waiver of searches
8 prior to entering the program.

9 And as I have been saying, I was sentenced in
10 2001. And one of those -- this condition in the
11 CSP was not in that requirement. And so in order
12 for me to get in the program I have to waive what
13 he calls a reduced right under the Fourth Amendment
14 to actually get in the program.

15 Now, the CSP didn't require this at the time
16 of my sentence. And so there is no real penalty in
17 the statute to say if I just say, you know what,
18 I'm not going to sign this piece of paper, I'm not
19 going to enter the CSP, there is no stipulation in
20 the statute that would give him a penalty to impose
21 or to violate me. And I don't understand that part
22 of it.

23 THE COURT: Well, you are not going to violate
24 him, are you?

25 MR. EVANS: Well, not my specific agent. But

1 I have got a feeling that if he doesn't want to
2 waive that right they are going to allow him to
3 stay at the Department of Corrections. I mean,
4 that is an actual condition that he must abide to.
5 You know, and that condition is -- that part of the
6 statute there has always been a condition in the
7 community supervision program that he consent to
8 that.

9 THE COURT: It sounds like I'm going to have
10 to dismiss your case today, but if they penalize
11 him in any way, he can then file.

12 MR. EVANS: He can refile in 11 years when it
13 comes to that point.

14 MR. CARTER: Well, Your Honor, the statute
15 says I don't have to wait until a breach of that
16 existing right to file a claim.

17 THE COURT: Well, I don't rule on things
18 prematurely, that is the problem. The statute
19 doesn't say that, but the bottom line is you are
20 going to lose today. You are a good brief writer.
21 You will be able to handle it.

22 Prepare an order, send him a copy of it.

23 MR. EVANS: Yes, sir, Your Honor. Thank you.

24 (WHEREUPON, the proceedings were concluded.)

25 (END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4003603

Derek S #275938 Carter

South Carolina Department of Probation Parole
Pardon Service

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

2015 MAY 18 PM 1:23
CLERK OF COURT
RICHLAND COUNTY

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 May 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Derek S #275938 Carter

Tommy Evans Jr.

Derek S #275938 Carter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter _____

Clerk of Court _____

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4003603

Derek S #275938 Carter

South Carolina Department of Probation Parole Pardon Service

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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ORDER INFORMATION

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Additional Information for the Clerk : Defendant's motion to dismiss granted. Defendant to submit order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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		\$
		\$

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Circuit Court Judge [Signature] Judge Code 017 Date 3/5/15

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of Mar, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of Mar, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Derek S #275938 Carter

Tommy Evans Jr.

Derek S #275938 Carter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4003603

Derek S #275938 Carter

South Carolina Department of Probation Parole Pardon Service

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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ORDER INFORMATION

This order ends does not end the case. Plaintiff's motion to compel moot due to defendant's motion to dismiss being granted.
Additional Information for the Clerk : _____

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Circuit Court Judge [Signature] Judge Code 017 Date 3/5/15

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Mar, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Mar, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Derek S #275938 Carter

Tommy Evans Jr.

Derek S #275938 Carter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4003603

Derek S #275938 Carter

South Carolina Department of Probation Parole
Pardon Service

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Derek S #275938 Carter

Tommy Evans Jr.

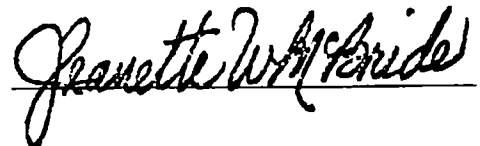
Derek S #275938 Carter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
 Derek S. Carter, SCDC #275938,)
)
 Plaintiff,)
)
 vs.)
)
 S.C. Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2014CP4002603

SUMMONS

RICHLAND COUNTY
 FILED
 2014 JUN -3 PM 4:56
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

TO: THE HONORABLE COURT and the DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default may be rendered against you for the relief demanded in the complaint.

Derek S Carter

Derek S. Carter, #275938
 Kershaw C.I., Unit MA-22
 4848 Goldmine Hwy
 Kershaw, SC 29067
 Plaintiff Pro Se

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Derek S. Carter, SCDC #275938,)
)
 Plaintiff,)
)
 vs.)
)
 S.C. Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

COMPLAINT

2014 JUN -3 PM 4:56
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

Plaintiff, complaining of the defendant, would show the court:

1. Plaintiff is an inmate of the South Carolina Department of Corrections ("SCDC"), and presently resides at the Kershaw Correctional Institution in the County of Lancaster, State of South Carolina.
2. Defendant is a governmental agency conducting business in Richland County, State of South Carolina.
3. At all times relevant to this action, Kela E. Thomas was the director of the South Carolina Department of Probation, Parole, and Pardon Services ("SCDPPPS"), and was acting within the scope of state employment and under the color of federal and State law. By statute the director is responsible for the development of terms and conditions for community supervision. S.C. Code Ann. §§ 24-1-10 et seq., §§ 24-21-10 et seq. She is sued in her individual and official capacities.
4. Plaintiff brings this action pursuant to the Plaintiff's constitutional rights protected under the United States and South Carolina Constitutions. This Court has jurisdiction pursuant to S.C. Code Ann. § 15-53-20 because a substantial part of the violations giving rise to the causes of action occurred in Richland County. Plaintiff also seeks a declaratory judgment pursuant to S.C. Code Ann. §§ 15-53-10 et seq.
5. On or about January 1, 1996, the South Carolina General Assembly passed Act 83, which created S.C. Code Ann. § 24-21-560 to provide that certain prisoners must complete a community supervision program operated by the SCDPPPS before their release from the criminal justice system.

6. Upon information and belief, S.C. Code Ann. § 24-21-560(B) of Act 83 (1996) mandated the time period a prisoner is required to participate in the community supervision program and the individual terms and conditions of a prisoner's participation at the discretion of the department based upon guidelines developed by the director of the SCDPPPS.
7. Upon information and belief, S.C. Code Ann. § 24-13-150(A) of Act 83 (1996) mandated a prisoner convicted of a "no parole offense" as defined in S.C. Code Ann. § 24-13-100 is not eligible for early release, discharge, or community supervision as provided in § 24-21-560 until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed.
8. Upon information and belief, S.C. Code Ann. § 24-13-100 of Act 83 (1996) defined a "no parole offense" as a class A, B, or C felony or an offense exempt from classification as enumerated in S.C. Code Ann. § 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.
9. On or about October 25, 2000, Plaintiff was arrested and detained for violating offenses defined as "no parole offenses" pursuant to § 24-13-100.
10. As to the claim in paragraph 9, Plaintiff plead guilty to offenses defined as a "no parole offense" on June 12, 2001.
11. Upon information and belief, the law existing at the time of the offense established a binding contract between Plaintiff and the State of South Carolina, which encompassed the continued protection of substantive rights, and determines whether an increase of punishment, or a deprivation of a substantive right, exists and is caused by the acts or omissions of the Defendant.
12. On or about April 28, 2010, the South Carolina General Assembly passed Act 151, which amended S.C. Code Ann. § 24-21-560(B) to provide that the conditions of a prisoner's participation in the community supervision program must include the requirement that the offender must permit the search or seizure, without a search warrant, with or without cause, of the offender's person, any vehicle the offender owns or is driving, and any of the offender's possessions by: (1) any probation agent employed by the SCDPPPS; or (2) any other law enforcement officer.
13. Upon information and belief, S.C. Code Ann. § 24-21-560(B) of Act 151 (2010) became effective on or about April 28, 2010 and applies prospectively.
14. On or about May 10, 2013, Plaintiff submitted a SCDC Form 19-11, "Request to Staff Member," ("RTSM") to SCDC employee Cpl. B. Miller to obtain the required approval to access the law library at Evans Correctional Institution.

15. As to the claim in paragraph 14, Cpl. B. Miller granted Plaintiff's request to access the law library each Wednesday, beginning on May 15, 2013 through June 30, 2013 for two (2) hours each week.

16. On or about June 5, 2013, Plaintiff accessed the Westlaw computer database in the law library and read the statutes governing the offenses of Plaintiff's conviction, including S.C. Code Ann. § 24-21-560.

17. As to the claim in paragraph 16, Plaintiff discovered for the first time that S.C. Code Ann. § 24-21-560(B) was amended on April 28, 2010 to include the new requirements stated in paragraph 12.

18. On or about June 6, 2013, Plaintiff submitted a RTSM to Cpl. B. Miller to request the date the Westlaw computer database became available to the inmates at Evans Correctional Institution.

19. As to the claim in paragraph 18, Cpl. B. Miller responded on June 11, 2013 and informed Plaintiff that the Westlaw computer database became available on "March, 2013."

20. On or about June 6, 2013, Plaintiff submitted a RTSM to SCDC employee J. Bethea of SCDC Classification to request SCDC's application of S.C. Code Ann. § 24-21-560(B) (2010) to Plaintiff.

21. Plaintiff's RTSM to J. Bethea questioned whether the 2010 amendment to S.C. Code Ann. § 24-21-560(B) applied to all eligible inmates regardless of the date of conviction.

22. Plaintiff's RTSM to J. Bethea questioned whether SCDC applied the 2010 amendment to S.C. Code Ann. § 24-21-560(B) to Plaintiff's current sentence.

23. Plaintiff's RTSM to J. Bethea questioned whether SCDC would release Plaintiff to the custody of the SCDPPS to participate in the community supervision program if Plaintiff refused to consent to the involuntary waiver of his rights against search or seizure, without a search warrant, with or without cause.

24. As to the claims in paragraphs 20 to 23, J. Bethea responded to Plaintiff's RTSM on June 14, 2013 by stating, "no to all above."

25. On or about June 6, 2013, Plaintiff submitted a letter to Defendant Thomas to request the SCDPPS's application of S.C. Code Ann. § 24-21-560(B) (2010) to Plaintiff.

26. Plaintiff's letter to Defendant Thomas questioned whether the 2010 amendment to S.C. Code Ann. § 24-21-560(B) applied to all eligible inmates regardless of the date of conviction.

27. Plaintiff's letter to Defendant Thomas questioned whether the refusal of such waiver by an eligible inmate results in a denial of access to the community supervision program.

28. Plaintiff's letter to Defendant Thomas questioned whether the community supervision program is mandatory for all inmates convicted of a "no parole offense."

29. Plaintiff's letter to Defendant Thomas questioned whether the SCDPPPS deems the 2010 amendment to S.C. Code Ann. § 24-21-560(B) mandatory.

30. As to the claims in paragraphs 25 to 29, Defendant Thomas failed to respond to Plaintiff's letter.

31. On or about June 8, 2013, Plaintiff submitted a letter to SCDC employee Christopher Florian, General Counsel for the SCDC, to request SCDC's application of S.C. Code Ann. § 24-21-560(B) (2010) to Plaintiff.

32. Plaintiff's letter to Christopher Florian questioned whether the 2010 amendment to S.C. Code Ann. § 24-21-560(B) applied to all eligible inmates regardless of the date of conviction.

33. Plaintiff's letter to Christopher Florian questioned whether the refusal of such waiver by an eligible inmate results in a denial of access to the community supervision program.

34. Plaintiff's letter to Christopher Florian questioned whether the community supervision program is mandatory for all inmates convicted of a "no parole offense."

35. Plaintiff's letter to Christopher Florian questioned whether the SCDC deems the 2010 amendment to S.C. Code Ann. § 24-21-560(B) mandatory.

36. Plaintiff's letter to Christopher Florian questioned whether his responses to the questions in paragraphs 32 to 35 were considered as a final decision by the SCDC.

37. As to the claims in paragraphs 31 to 36, Christopher Florian responded on June 14, 2013 by advising Plaintiff to address the questions about community supervision to the SCDPPPS "who oversees the program."

38. On or about June 17, 2013, Plaintiff submitted a RTSM to J. Bethea as a follow-up to the response received on June 14, 2013 concerning the Plaintiff's RTSM to J. Bethea on June 6, 2013.

39. Plaintiff's RTSM to J. Bethea questioned whether the SCDC applied S.C. Code Ann. § 24-21-560(B) as it was defined on January 1, 1996, or as it is now defined by the 2010 amendment.

40. As to the claims in paragraphs 38 and 39, J. Bethea responded on June 27,

2013 and stated "if the judge ordered it, according to state statute, and no, you cannot waive search or seizure."

41. On or about July 12, 2013, Plaintiff submitted a letter to SCDPPPS employee Teresa Knox to request the SCDPPPS's application of S.C. Code Ann. § 24-21-560(B) (2010) to Plaintiff.

42. Plaintiff's letter to Teresa Knox presented the same questions submitted to Defendant Thomas on June 6, 2013 as stated in paragraphs 25 to 29.

43. As to the claims in paragraphs 41 and 42, Plaintiff received a response from SCDPPPS employee Matthew Buchanan, General Counsel for the SCDPPPS, on July 19, 2013, providing specific responses to the questions submitted to Defendant Thomas in paragraphs 25 to 29.

44. Upon information and belief, the SCDPPPS interprets, asserts, and declares the 2010 amendment to S.C. Code Ann. § 24-21-560(B) applies to all eligible inmates regardless of the date of conviction.

45. Upon information and belief, the SCDPPPS interprets, asserts, and declares the 2010 amendment to S.C. Code Ann. § 24-21-560(B) added the requirement that the community supervision program must include the requirement allowing search and seizures.

46. Upon information and belief, the SCDPPPS interprets, asserts, and declares inmates do not have a choice to refuse their consent to their rights to search and seizure, as the new added requirement is a mandatory part of the community supervision program.

47. Upon information and belief, the SCDPPPS interprets, asserts, and declares the only exceptions to these mandatory requirements of participation in the community supervision program for inmates convicted of a "no parole offense" are for those inmates sentenced to life imprisonment or the death penalty.

48. On or about August 6, 2013, Plaintiff was transferred to Kershaw Correctional Institution.

49. On or about March 3, 2014, Plaintiff submitted a letter to Matthew Buchanan to request further information about the SCDPPPS's interpretation of S.C. Code Ann. § 24-21-560(B) (2010).

50. Plaintiff's letter to Matthew Buchanan questioned what specific language in the 2010 amendment to S.C. Code Ann. § 24-21-560(B) gives the SCDPPPS authority to apply the amended statute to inmates convicted prior to January 1, 2010.

51. Plaintiff's letter to Matthew Buchanan questioned whether inmates convicted

of a "no parole offense" prior to January 1, 2010 retained their rights under the Fourth Amendment of the U.S. Constitution, and under Art. I., sec. 10 of the S.C. Constitution.

52. Plaintiff's letter to Matthew Buchanan questioned whether the 2010 amendment to S.C. Code Ann. § 24-21-560(B) is a mandatory part or condition of an inmate's sentence for a conviction of a "no parole offense."

53. As to the claims in paragraphs 49 to 52, Plaintiff received a response from Matthew Buchanan on March 6, 2014, providing specific responses to the questions in paragraphs 50 to 52.

54. Upon information and belief, the SCDPPPS interprets, asserts, and declares that S.C. Code Ann. § 24-21-560(B) states that the SCDPPPS shall develop terms and conditions for community supervision, but that the conditions must include the offender submit to warrantless searches of their person and vehicle.

55. Upon information and belief, the SCDPPPS interprets, asserts, and declares this change in the law merely amends the supervision guidelines and does not rise to the level of punishment.

56. Upon information and belief, the SCDPPPS interprets, asserts, and declares all individuals retain their rights under the U.S. and S.C. Constitutions, but those under supervision have a reduced right on account of their conviction and sentence.

57. Upon information and belief, the SCDPPPS interprets, asserts, and declares the 2010 amendment to S.C. Code Ann. § 24-21-560(B) is a mandatory part or condition of an inmate's sentence for a conviction of a "no parole offense."

58. Plaintiff asserts the Fourth Amendment of the U.S. Constitution provides and declares "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

59. As to the claim in paragraph 58, Plaintiff asserts he retained his substantive legal rights against unreasonable searches and seizures, but upon probable cause, under the Fourth Amendment of the U.S. Constitution, to the extent that the added mandatory requirements in S.C. Code Ann. § 24-21-560(B), as asserted by the Defendant in paragraphs 43 to 47 and 49 to 57, was not a mandatory requirement of the community supervision program at the time of Plaintiff's guilty plea on June 12, 2001.

60. Plaintiff asserts Article VI, Clause 2 of the U.S. Constitution provides and declares the "Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary."

61. Upon information and belief, Plaintiff asserts the Fourth Amendment and Article VI, Clause 2 of the U.S. Constitution provide and declare substantive federal legal rights enforceable by Plaintiff.

62. Plaintiff asserts Article I., sec. 4 of the S.C. Constitution provides and declares "no bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate."

63. Plaintiff asserts Article I., sec. 10 of the S.C. Constitution provides and declares "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."

64. Plaintiff asserts Article I., sec. 23 of the S.C. Constitution provides and declares "the provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms."

65. As to the claims in paragraphs 62 to 64, Plaintiff asserts he retained his substantive legal rights against unreasonable searches and seizures, but upon probable cause, under Article I., sec. 10 of the S.C. Constitution, to the extent that the added mandatory requirements in S.C. Code Ann. § 24-21-560(B), as asserted by the Defendant in paragraphs 43 to 47 and 49 to 57, was not a mandatory requirement of the community supervision program at the time of Plaintiff's guilty plea on June 12, 2001.

66. Upon information and belief, Plaintiff asserts Article I., sec. 4 of the S.C. Constitution expressly prohibits any law impairing the obligation of contracts, and that Plaintiff has a binding contract with the State of South Carolina that encompasses the continued protection of the substantive legal rights asserted herein, and establishes the terms and conditions of Plaintiff's participation in the community supervision program under S.C. Code Ann. § 24-21-560(B) based on the law existing at

the time of the offenses of Plaintiff's conviction and sentence.

67. Upon information and belief, Plaintiff asserts Article I., sec. 4, 10, and 23 of the S.C. Constitution provide and declare substantive State legal rights enforceable by Plaintiff.

68. On or between January 1, 1996 and April 28, 2010, S.C. Code Ann. § 24-21-560(B) required searches and seizures by any probation agent employed by the SCDPPPS, or by any other law enforcement officer, to be permitted by the voluntary consent of Plaintiff, or by a warrant issued upon probable cause and supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

69. As to the claim in paragraph 68, Defendant Thomas has a positive legal duty to develop the terms and conditions for the community supervision program, and to interpret and enforce the statutory requirements of S.C. Code Ann. § 24-21-560(B) consistently with the law existing at the time of the offenses of Plaintiff's conviction and sentence, and without impairing the obligation of the binding contract with the State of South Carolina, to which the SCDPPPS and Defendant Thomas is a party as a collateral consequence of Plaintiff's guilty plea on June 12, 2001.

CAUSES OF ACTION

Count I

Plaintiff Was Denied The Right Against Unreasonable Searches And Seizures In Violation Of The Fourth Amendment Of The U.S. Constitution, And Under Article I., Sec. 10 Of The S.C. Constitution.

70. Plaintiff incorporates paragraphs 1 through 69 as though they were stated fully herein.

71. Defendant Thomas violated Plaintiff's constitutional rights under the Fourth Amendment of the U.S. Constitution, and under Article I., sec. 10 of the S.C. Constitution, by interpreting and applying S.C. Code Ann. § 24-21-560(B) (2010) to the terms and conditions of Plaintiff's participation in the community supervision program so as to deny Plaintiff's right against unreasonable searches and seizures, but upon the issuance of a warrant and upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized, by any probation agent employed by the SCDPPPS, or by any law enforcement officer.

72. Defendant Thomas violated Plaintiff's constitutional rights under the Fourth Amendment of the U.S. Constitution, and under Article I., sec. 10 of the S.C. Constitution, by forcing Plaintiff to waive his right, without his voluntary consent, against unreasonable searches and seizures, by mandating Plaintiff's access and participation in the community supervision program with the added requirement that Plaintiff must permit the search or seizure, without a search warrant, with or without cause, of Plaintiff's person, any vehicle Plaintiff owns or is driving, and any of the Plaintiff's possessions by any probation agent employed by the SCDPPPS, or by any law enforcement officer.

Count II

Plaintiff Was Denied The Right Against The Impairment Of The Obligation Of Contracts In Violation Of Article I., Sec 4 Of The S.C. Constitution.

73. Plaintiff incorporates paragraphs 1 through 69 as though they were stated fully herein.

74. Defendant Thomas violated Plaintiff's constitutional rights under Article I., sec. 4 of the S.C. Constitution by interpreting and applying S.C. Code Ann. § 24-21-560(B) (2010) as being the terms and conditions of Plaintiff's participation in the community supervision program, so as to alter and impair the original obligations of the statutory terms and conditions agreed upon between Plaintiff and the State of South Carolina by Plaintiff's guilty plea on June 12, 2001, to which the SCDPPPS and Defendant Thomas were a party as a collateral consequence and expressly incorporated by reference therein.

75. Defendant Thomas violated Plaintiff's constitutional rights under Article I., sec. 4 of the S.C. Constitution by forcing Plaintiff to waive his right, without his voluntary consent, to the original statutory terms and conditions of Plaintiff's participation in the community supervision program by mandating Plaintiff's access and participation in the community supervision program with the added requirement that Plaintiff must permit the search or seizure, without a search warrant, with or without cause, of Plaintiff's person, any vehicle Plaintiff owns or is driving, and any of the Plaintiff's possessions by any probation agent employed by the SCDPPPS, or by any law enforcement officer.

Count III

Plaintiff Was Subjected To Ex Post Facto Laws In Violation Of Article I., Sec. 4 Of The S.C. Constitution.

76. Plaintiff incorporates paragraphs 1 through 69 as though they were stated fully herein.

77. Defendant Thomas violated Plaintiff's constitutional rights under Article I., sec. 4 of the S.C. Constitution by interpreting and retroactively applying S.C. Code Ann. § 24-21-560(B) (2010) as being the terms and conditions of Plaintiff's access and participation in the community supervision program, so as to alter and add the requirement that Plaintiff must permit the search or seizure, without a search warrant, with or without cause, of Plaintiff's person, any vehicle Plaintiff owns or is driving, and any of Plaintiff's possessions by any probation agent employed by the SCDPPPS, or by any law enforcement officer.

78. Defendant Thomas violated Plaintiff's constitutional rights under Article I., sec. 4 of the S.C. Constitution by interpreting and retroactively applying S.C. Code Ann. § 24-21-560(B) (2010) as being the terms and conditions of Plaintiff's access and participation in the community supervision program, so as to effectively deprive the continued protection of substantive legal rights retained and encompassed by the law existing at the time of the offenses of Plaintiff's conviction and sentence.

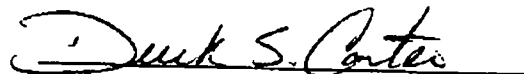
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. Declare that the acts and omissions described herein violated Plaintiff's rights under the U.S and S.C. Constitutions, and the statutory laws of the State of South Carolina;
- B. Order Defendant to apply S.C. Code Ann. § 24-21-560 (1996) as being the terms and conditions of Plaintiff's access and participation in the community supervision program;
- C. Order Defendant to pay all reasonable fees and costs; and
- D. Grant other just and equitable relief that this Honorable Court deems necessary.

I declare and verify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Respectfully submitted,



Derek S. Carter, #275938

Kershaw Correctional Institution
Unit MA-22
4848 Goldmine Hwy
Kershaw, S.C. 29067

Plaintiff Pro Se

Dated: May 29, 2014
Kershaw, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Derek S. Carter, SCDC #275938,)
)
Plaintiff,)

Civil Action No. 2014-CP-40-3603

vs.)

CERTIFICATE OF SERVICE

S.C. Department of Probation,)
Parole, and Pardon Services,)
)
Defendant.)

Pursuant to Rule 4(d)(5), SCRCP, I certify that I have served the Summons and Complaint:

1. Upon the Defendant by depositing a copy of the same in the United States Mail, postage prepaid, on June 12, 2014, addressed to Kela E. Thomas, S.C. Dept. of Probation, Parole, and Pardon Services, P.O. Box 50666, Columbia, S.C. 29250.
2. Upon the Attorney General by depositing a copy of the same in the United States Mail, by certified mail, on June 12, 2014, addressed to Alan Wilson, Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

June 12, 2014
Kershaw, South Carolina



Derek S. Carter, #275938
Kershaw C.I., Unit MA-22
4848 Goldmine Hwy
Kershaw, S.C. 29067
Plaintiff Pro Se

2014 JUN 16 PM 4:38
JEANETTE W. NEBBARD
S.C.P. & G.S.
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No.: 2014-CP-40-3603

Derek S. Carter, SCDC# 275938)

Plaintiff,)

v.)

S.C. Department of Probation, Parole, and)
Pardon Services,)

Defendant.)

ANSWER

2014 JUL 24 PM 4: 32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Comes now the Defendant the South Carolina Department of Probation, Parole and Pardon Services answers the Plaintiff's complaint served upon them on June 24, 2014.

1. Defendant admits the Plaintiff is currently an inmate within the Kershaw Correctional Institution, in the county of Lancaster, State of South Carolina.
2. Defendant admits it is a governmental agency conducting business in Richland County, State of South Carolina.
3. Defendant admits Mrs. Kela E. Thomas is currently the Director of the South Carolina Department of Probation, Parole and Pardon Services. The Defendant would further admit the Director is responsible for the development of the terms and conditions of the community supervision program.
4. Defendant denies this court has jurisdiction over this cause of action. The Plaintiff is making claims that he currently does not have the standing to make; therefore, this case should be subject to dismissal.

5. Defendant admits that on January 1, 1996, the General Assembly passed the community supervision program for individuals who have committed a "no parole offense." Defendant denies this program is operated prior to an inmate's released from incarceration.
6. Defendant would only admit that an inmate serving a sentence for a "no parole" offense upon release from incarceration is responsible for the completion of a two year community supervision program.
7. Defendant admits that an inmate convicted of committing a "no parole offense" must serve at least eighty-five percent of their sentence before release from incarceration.
8. Defendant admits a "no parole offense" is considered an A, B, or C Felony or an offense exempt from classification that carries a maximum term of imprisonment of twenty years or more.
9. Defendant admits the Plaintiff was arrested for committing the offense of homicide by child abuse which is considered a "no parole offense."
10. Defendant admits the Plaintiff pled guilty to the above reference offense.
11. Defendant admits the elements and punishment of the crime at the time of commission applies to the offense committed.
12. Defendant admits that on April 28, 2010, the General Assembly created the South Carolina Reduction of Recidivism Act which allows a warrantless search of an individual on community supervision.
13. Defendant admits the South Carolina Reduction of Recidivism Act came into effect on April 28, 2010, and can only be applied prospectively.
14. Defendant is not part of the South Carolina Department of Corrections; therefore, they are not a party to any request made to an employee of the Department of Corrections.

15. Defendant cannot answer any claim regarding this matter.
16. Defendant cannot answer any claim regarding this matter.
17. Defendant cannot answer any claim regarding this matter.
18. Defendant cannot answer any claim regarding this matter.
19. Defendant cannot answer any claim regarding this matter.
20. Defendant cannot answer any claim regarding this matter.
21. Defendant denies S.C. Code Ann. §24-21-560(B) applies to any inmate currently incarcerated within the Department of Corrections. It only applies to individuals currently under supervision under a program manage by the Defendant.
22. Defendant cannot answer any claim regarding this matter.
23. Defendant cannot answer any claim regarding this matter.
24. Defendant cannot answer any claim regarding this matter.
25. Defendant is not aware of any correspondence delivered by the Plaintiff to Director Thomas.
26. Defendant admits that S.C. Code Ann. §24-21-560(B) only applies to individual currently under supervision. It does not apply to an inmate currently incarcerated within the Department of Corrections.
27. Defendant is not aware of any inquiries by the Plaintiff to Director Thomas.
28. Defendant is not aware of any such inquiries by the Plaintiff to Director Thomas. Defendant admits that the community supervision program is mandatory to anyone released upon the service of a sentence considered a "no parole offense."
29. Defendant admits that the community supervision program is mandatory.
30. Defendant is unaware of any letter delivered to Director Thomas by the Plaintiff.

31. Defendant is unaware of this matter.
32. Defendant is unaware of this matter.
33. Defendant is unaware of this matter.
34. Defendant is unaware of this matter.
35. Defendant is unaware of this matter.
36. Defendant is unaware of this matter.
37. Defendant admits they do oversee the community supervision program.
38. Defendant is unaware of this matter.
39. Defendant is unaware of this matter.
40. Defendant is unaware of this matter.
41. Defendant admits Plaintiff did deliver a letter to Teresa Knox who no longer works for the Department.
42. Defendant admits the letter delivered to Ms. Knox inquired about different aspects of the community supervision program.
43. Defendant admits that Mr. Matthew Buchanan, General Counsel of the Department did respond to the Plaintiff's letter on July 19, 2013.
44. Defendant denies that the Department interprets the 2010 amendment to §24-21-560 applies to any inmate. It only applies to individuals currently in the community supervision program.
45. Defendant admits the community supervision program does have a consent to search requirement.
46. Defendant denies inmates are part of the community supervision program.

47. Defendant denies there exist any exceptions to the search requirement within the community supervision program.
48. Defendant admits Plaintiff was transferred to the Kershaw Correctional Institution on August 6, 2013.
49. Defendant admits the Plaintiff did mail a letter to Department General Counsel Matthew Buchanan.
50. Defendant admits this statute gives the Department the authority to apply community supervision to individuals sentenced prior to January 1, 2010.
51. Defendant admits Plaintiff did inquire to Mr. Buchanan regarding his rights under the fourth amendment of the United States Constitution.
52. Defendant admits Plaintiff asked whether the 2010 amendment to §24-21-560(B) is mandatory.
53. Defendant admits Plaintiff did receive a response from Mr. Buchanan on March 6, 2014.
54. Defendant admits, any individual currently on community supervision must consent to searches.
55. Defendant admits this amendment only applied to individuals currently under supervision of the Department.
56. Defendant admits any individual currently under supervision does not have the identical rights of an ordinary individual not under Department supervision.
57. Defendant admits a consent to search is a mandatory condition of the community supervision program.
58. Defendant admits that the fourth amendment states what the Plaintiff listed in his complaint.

59. Defendant provides, Plaintiff does not have standing to make this argument due to the fact he is currently not participating in the community supervision program.
60. Defendant admits the U.S. Constitution does state what was mentioned in Plaintiff's complaint.
61. Defendant provides, any cause of action the Plaintiff may have regarding his constitutional rights must be brought against the Department of Corrections due to his current incarceration.
62. Defendant admits the ex post facto clause currently exist within the South Carolina Constitution.
63. Defendant admits the S.C. Constitution does not allow unreasonable search and seizures.
64. Defendant admits the S.C. Constitution allows what was stated in Plaintiff's complaint.
65. Defendant asserts, the Plaintiff is not currently participating in the community supervision program so he does not have standing to make this argument.
66. The Plaintiff does not have standing to make this argument due to him not participating in the community supervision program.
67. Defendant asserts the Plaintiff does not yet have standing to make this argument.
68. Defendant admits voluntary searches are a mandatory condition of the community supervision program.
69. Defendant admits Director Thomas has a duty to make sure the conditions and terms of the community supervision program are developed and enforced by the Department.

FIRST AFFIRMATIVE DEFENSE.

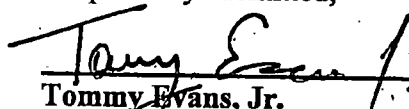
70. Defendant sets forth all defenses in his first paragraph as if needed verbatim.

71. Defendant asserts that Plaintiff is not currently or has never been a participant in the community supervision program; therefore, he does not have standing to raise this cause of action.

Defendant the South Carolina Department of Probation, Parole and Pardon Services having answered the Plaintiff's summons and complaint, request the Court to dismiss this cause of action.

WHEREFORE, the Defendant respectfully prays that the Court dismisses this complaint and for all other relief that is just and proper.

Respectfully submitted,



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole,
Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

Attorney for the Defendant

Columbia, South Carolina
July 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Derek Carter

Plaintiff,

vs.

SCDPSS

Defendant.

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

CASE NO.: 14-CP-40-3603

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

2014 JUL 24
JEANNETTE
C.C.H. & S. BRIDE
FILED
RICHLAND COUNTY
CLERK
29257

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. <u>65282</u> Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
---	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Army Egan Jr.
 Signature of Attorney for Plaintiff / Defendant Date submitted 7/12/14

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____ JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No.: 2014-CP-40-3603

Derek S. Carter, SCDC# 275938)

Plaintiff,)

v.)

S.C. Department of Probation, Parole, and)
Pardon Services,)

Defendant.)

MOTION TO DISMISS

2014 JUL 24 PM 4:32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The Defendant, the South Carolina Department of Probation, Parole and Pardon Services, hereby submits this motion to dismiss the Plaintiff's Summons and Complaint. The Defendant submits this motion should be granted due to the Plaintiff's lack of standing in this cause of action.

PROCEDURAL AND FACTURAL HISTORY

On October 14, 2000, the Appellant committed the offense of homicide by child abuse. He later appeared before the Honorable John W. Kittredge for this offense, upon the conclusion of this appearance, the Court sentenced the Plaintiff to a thirty year period of incarceration.

On June 3, 2014, the Plaintiff filed this summons and complaint. Within this complaint the Plaintiff argues that Section 24-21-640 of the South Carolina Code of Laws as part of the South Carolina Reduction of Recidivism Act of 2010, is unconstitutional. He argues that allowing law enforcement to search his person as part of the community supervision program is in violation of the Fourth Amendment of the United States Constitution. The Defendant seeks a dismissal due to the fact the Plaintiff is currently incarcerated and is not a part of the community supervision program. He lacks standing to argue that the consent to search under the community supervision is unconstitutional.

ARGUMENT

The Plaintiff is currently incarcerated and not a part of the community supervision program; therefore, he lacks standing to bring this cause of action.

The Plaintiff argues that current South Carolina law allowing the search of individuals under supervision without the benefit of a warrant is unconstitutional. The South Carolina Code of Laws specifically state:

Before an inmate may be released on parole, he must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

- (1) Any probation agent employed by the Department of Probation, Parole and Pardon Services;
- (2) Any other law enforcement officer.

S.C. Code Ann. §24-21-640 (Supp. 2013).

The Plaintiff is currently incarcerated for the offense of homicide by child abuse. This is classified as a C-Felony which makes this a no parole offense.¹ Due to this offense being a no parole offense the Plaintiff would have to serve a minimum of 85% of this sentence.² Upon completion of his sentence subject to serve two continuous years of community supervision upon release.³ As part of the Community Supervision program the inmate must consent to search. Plaintiff now files this complaint seeking that the Court order that this requirement is in violation of the United States and

¹ For purposes of definition under South Carolina law, a "no parole offense" means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. §24-13-100(Supp. 1995).

² Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed. S.C. Code Ann. §24-13-150 (Supp. 1995).

³ Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a "no parole offense" as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §24-21-560(Supp. 1995).

South Carolina Constitution's. The Defendant argues that since the Plaintiff is currently incarcerated and is not due to be released until April 19, 2026, he lack standing to make any arguments regarding the constitutionality of the Community Supervision program.

The Plaintiff argues that he should not be forced to consent to unwarranted searches once he is a part of the community supervision program. Since he is not part of the program he lacks standing to make this argument before the Court. The party seeking to establish standing carries burden of demonstrating each of three elements for standing; first, plaintiff must have suffered an injury in fact; second, there must be a causal connection between the injury and the conduct complained of; and third, it must be likely that the injury will be redressed by a favorable decision. Sea Pines Assoc. for the Protection of Wildlife v. S.C. Dept. of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (2001). Since the Plaintiff is not yet a part of the community supervision program, he has not suffered any damages regarding individuals having to consent to search. Since there are no damages, there exist no connection to any injury and the conduct complained of. Any determination made by the court will not redress any injury that currently does not exist.

This Plaintiff has no standing in this cause of action. To have standing, one must have a personal stake in the subject matter of the lawsuit, that is, one must be a real party in interest. Sea Pines, at 600. The Plaintiff will not become a part of the Community Supervision program until 2026, some twelve years from now. That program, or the consent to search, might not be in existence by the time the Plaintiff is released from incarceration. Since he is still incarcerated, and not a part of the program, he does not have a personal stake in the consent to search issues raised in his complaint; therefore, his case lacks standing.

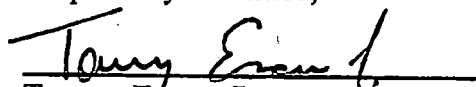
Since he might become a part of the community supervision program; the Plaintiff might have an interest in the consent requirement. However, a Plaintiff must have more than a passing

interest in a matter in order to show he has standing. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Id. The Plaintiff makes an argument regarding the constitutionality of a program that he is currently not a part of; therefore, none of the rules pertain to him. The Plaintiff has failed to reveal any damages due to community supervision. He currently does not have any standing to raise this cause of action, the Defendant respectfully request this Honorable Court dismiss this cause of action with prejudice.

CONCLUSION

Due to the Plaintiff's lack of standing pursuant to South Carolina law, the Defendant respectfully requests this action be dismissed with prejudice.

Respectfully submitted,



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
July 22, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No.: 2014-CP-40-3603

Derek S. Carter, SCDC# 275938)
)
Plaintiff,)

v.)
)
S.C. Department of Probation, Parole, and)
Pardon Services,)
)
Defendant.)

CERTIFICATE OF SERVICE
2014 JUL 24 PM 4:32
JENNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

I, Dawn Nichols, Executive Administrative Assistant with the South Carolina Department of Probation, Parole and Pardon Services, hereby certify that this 22nd day of July, 2014, I served the following documents:

- 1. Answer;
- 2. Motion to Dismiss; and
- 3. Certificate of Service.

by first class mail, postage prepaid as follows.

Derek Carter, #275938
Kershaw Correctional Institution-Unit MA-22
4848 Goldmine Highway
Kershaw, South Carolina 29067



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

August 7, 2014

Tommy Evans, Jr.
Assistant General Counsel
S.C. Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, SC 29250

Re: Carter v. SCDPPPS,
2014-CP-40-3603
Plaintiff's Reply &
Request For Admissions

Dear Mr. Evans:

Enclosed, please find copies of the above-reference documents, which I have submitted for filing today.

Please be advised my purpose of this suit is to "secure the just, speedy, and inexpensive determination of [this] action." To that end, I am proposing that we settle this matter by your consent to the following terms:

1. The Defendant shall apply § 24-21-560 (1996) as being the terms and conditions of Plaintiff's access to and participation in the CSP, as originally imposed by the Honorable Judge John W. Kittredge on June 12, 2001.
2. The Defendant shall agree to pay the filing fees for this action.

Mr. Evans, I will allow you ten (10) days to consider and reply to my proposal of settlement. If you agree to consent to these terms, I will prepare and submit a Consent Order to you for your signature.

In closing, I will appreciate your cooperation in this matter.

Thank you. Sincerely, I am,



Derek S. Carter, #275938
Kershaw C.I., Unit MA-22
4848 Goldmine Hwy.
Kershaw, SC 29067

/dsc

Enc: As stated

cc: File

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Derek S. Carter, SCDC #275938,)
)
 Plaintiff,)
)
 vs.)
)
 S.C. Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40303

REPLY

2014 AUG 11 AM 11:15
 FILED
 RICHLAND COUNTY
 JENNIFER W. MCBRIDE
 C.P. & G.S.

The Plaintiff, Derek S. Carter, SCDC #275938, pro se, hereby submits this Reply to Defendant's Motion to Dismiss, and would respectfully show this Court:

PROCEDURAL AND FACTUAL HISTORY

The Plaintiff is presently confined in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Anderson County. The Plaintiff was indicted in 2001 for the offenses of S.C. Code Ann. §§ 16-3-85(A)(1) and 16-3-95(A), and subsequently pleaded guilty before the Honorable John W. Kittredge on June 12, 2001. Judge Kittredge sentenced Plaintiff to a concurrent term of (30) years.

On June 3, 2014, the Plaintiff filed a Summons and Complaint. Despite the Defendant's misrepresentations, the Plaintiff does not argue that S.C. Code Ann. § 24-21-640 (Supp. 2013) of the South Carolina Reduction of Recidivism Act of 2010 is unconstitutional. Instead, the Plaintiff argues that, although the Community Supervision Program ("CSP") is a mandatory and integral part of Plaintiff's sentence, the Defendant has changed the quantum of punishment by requiring that Plaintiff consent to be subject to search and seizure, without a search warrant, with or without cause, in order to gain access to and participate in the CSP. The Plaintiff has standing in this cause of action because access to the CSP is a mandatory condition of Plaintiff's sentence, and Plaintiff was not required to consent to be subject to warrantless search or seizures in order to gain access to the CSP at the time of Plaintiff's offenses on October 14, 2000.

The Plaintiff's complaint seeks a declaratory judgment pursuant to the provisions of S.C. Code Ann. §§ 15-53-10 et seq., and alleges the following:

1. Plaintiff Was Denied The Right Against Unreasonable Search And Seizures In Violation Of The Fourth Amendment Of The U.S. Constitution, And Under Article I., Sec. 10 Of The Constitution.
2. Plaintiff Was Denied The Right Against The Impairment Of The Obligation Of Contracts In Violation Of Article I., Sec. 4 Of The S.C. Constitution.
3. Plaintiff Was Subjected To Ex Post Facto Laws In Violation Of Article I., Sec. 4 Of The Constitution.

ARGUMENTS

1. **Plaintiff Was Denied The Right Against Unreasonable Search And Seizures In Violation Of The Fourth Amendment Of The U.S. Constitution, And Under Article I., Sec. 10 Of The S.C. Constitution.**

The Plaintiff maintains the Defendant violated the Plaintiff's Fourth Amendment right under the U.S. Constitution by altering the conditions of Plaintiff's sentence by a construction of S.C. Code Ann. : 24-21-560(B) (2010) that "add[s] the requirement that the [CSP] must include the requirement allowing search and seizures" (Complaint, para. 71), or alternatively, by forcing Plaintiff to waive his right , without voluntary consent, in order to gain access to the CSP, a mandatory part of Plaintiff's sentence (Complaint, para. 72).

The Declaratory Judgment Act provides that "[c]ourts of record within their respective jurisdiction shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (1976). "Any person whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance may have determined any question or construction or validity arising under the statute [or] ordinance and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30 (1976): see also Rule 57, SCRPC.

The Plaintiff argues the Declaratory Judgment Act is a proper vehicle in which to bring this cause of action before this Court because there is an existing controversy or at least the ripening seeds of a controversy. Cf. Waller v. Waller, 220 SC 212, 223, 66 SE2d 876, 882 (1951). The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship. Sunset Cay LLC v. City of Folly Beach, 357 SC 414, 593 SE2d 462 (2004); see also Graham v. State Farm Mutual Automobile Ins. Co., 319 SC 69, 459 SE2d 844 (1995).

To state a cause of action under the Act, a party must demonstrate a justiciable controversy. Consignment Sale LLC v. Tucker Oil Co., 391 SC 266, 705 SE2d 73 (SCApp 2010); also Holden v. Cribb, 349 SC 132, 561 SE2d 634 (SCApp 2002). Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto which are denied by the adverse party, there is a justiciable controversy calling for the invocation of a declaratory judgment action. Dantzler v. Callison, 227 SC 317, 88 SE2d 64 (1955).

Plaintiff maintains that on June 6, 2013, Plaintiff submitted a letter to Kella E. Thomas, Director of the South Carolina Department of Probation, Parole and Pardon Services ("SCDPPPS"), and requested the SCDPPPS's application of § 24-21-560(B) (2010) to Plaintiff, questioned whether the 2010 amendment applied to all inmates regardless of the date of conviction, questioned whether the refusal of such waiver by an eligible inmate results in a denial of access to the CSP, questioned whether the CSP is mandatory for all inmates convicted of a "no parole offense", and questioned whether the SCDPPPS deems the 2010 amendment mandatory (Complaint, para. 25-29). The Defendant claims they are "not aware" of this correspondence (Answer, para. 25).

However, Plaintiff argues that General Counsel for the Defendant, Matthew Buchanan, responded to these inquiries on July 19, 2013, stating that consent to warrantless search or seizures is a "mandatory" part of the CSP, and that inmates are "not given a choice" to waive consent (Complaint, para. 42-46; see also July 19, letter by Matthew Buchanan).

Therefore, according to the Defendant, the plaintiff must now voluntarily waive his constitutional right against warrantless search and seizures in order to access participation in the CSP.

The Plaintiff argues that warrantless search and seizures are unreasonable absent a recognized exception to the Fourth Amendment's warrant requirement. State v. Brown, 389 SC 473, 698 SE2d 811 (SC App 2010). The determination of whether consent to a warrantless search is voluntary or whether it is the result of duress or coercion is a question of facts to be determined from a totality of the circumstances. Cf. State v. Provet, 391 SC 494, 706 SE2d 513 (2010). Although the Plaintiff is not currently participating in the CSP, the Plaintiff has standing in this cause of action because the complaint alleges fact of "a primary right of the Plaintiff actually violated by the Defendant, or alternatively, the threatened violation of such right, which violation the Plaintiff is entitled to restrain or prevent." See Edwin E. Bryant, The Law Pleading Under the Code of Civil Procedure, pg. 170 (2nd ed. 1899).

The Defendant has changed the quantum of punishment by requiring that Plaintiff consent to warrantless search or seizures in order to gain access to and participate in the CS—even though the CSP is a mandatory and integral part of Plaintiff's sentence that was imposed nearly nine (9) years before the passage of the South Carolina Reduction of Recidivism Act on April 28, 2010. Plaintiff was not required to consent to warrantless search or seizures in order to gain access to the CSP at the time of Plaintiff's offenses on October 14, 2000.

Therefore, Plaintiff has standing in this cause of action, and the Defendant's motion to dismiss should be denied.

2. Plaintiff Was Denied The Right Against The Impairment Of The Obligation Of Contract In Violation Of Article I., Sec. 4 Of The S.C. Constitution.

The Plaintiff maintains the Defendant violated Plaintiff's rights under Article I., Sec. 4 of the S.C. Constitution by altering and impairing the original obligations of the terms and conditions agreed upon between Plaintiff and the State of South Carolina by Plaintiff's guilty plea on June 12, 2001, to which the Defendant was a party (Complaint, para. 74), or alternatively, by forcing Plaintiff to waive his right, without his voluntary consent, in order to gain access to the CSP, a mandatory part of Plaintiff's sentence (Complaint, para. 75).

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Consignment Sales, Supra. The basic purpose of the Act is to provide for declaratory judgment without waiting a breach of existing rights. Sunset Cay LLC, supra. In order to recover for breach of contract, a plaintiff must allege and prove the existence of a contract, the breach of the contract, and damages cause by the breach. Fuller v. Fire & Cas. Ins. Co., 240 SC 75, 89, 124 SE2d 602 (1962).

Plaintiff argues the complaint alleges the terms and conditions of the CSP, as defined by S.C. Code Ann. § 24-21-560 (1996), is the law that applies to Plaintiff's sentence resulting from a guilty plea on June 12, 2001 (Complaint, para. 11),. While guilty pleas are a matter of criminal jurisprudence, most courts have held they are subject to contract principles. United States v. Ringling, 988 F2d 504 (4th Cir. 1993). The Defendant admits the "punishment of the crime at the time of commission applies to the offense committed" (Answer, para. 11). Included within this "punishment" is the "standard conditions of probation, which are incorporated by reference" as a collateral consequence of Plaintiff's guilty plea, as indicated on the General Sessions Sentencing Sheet (Form SCCA/217 (1/01)) for each offense on file with the Clerk of Court for Anderson County.

Plaintiff argues these sentencing sheets manifest a mutual assent to the mandatory terms and conditions of the CSP, as defined by § 24-21-560 (1996), and establishes a binding legal contract between Plaintiff and Defendant as a collateral consequence of Plaintiff's guilty plea. Edens v. Laurel Hill Inc., 271 SC 360, 364, 274 Se2d 434, 436 (1978) (In general, a binding contract requires a manifestation of mutual assent to its terms). The terms and conditions of the CSP at the time of Plaintiff's offenses on October 14, 2000 did not require Plaintiff to waive his right against warrantless search or seizures in order to gain access to the CSP, a mandatory part of Plaintiff's sentence.

The Defendant has breached this contract, and has changed the quantum of Plaintiff's punishment, by now requiring that Plaintiff consent to warrantless search or seizures in order to gain access to and participate in the CSP, a mandatory part of Plaintiff's sentence. The Defendant now claims that Plaintiff is "not given a choice" to waive consent (Complaint, pra. 42-46; see also July 19, 2013 letter by Matthew Buchanan), and can be reasonably construed as an anticipatory breach by the Defendant.

The Plaintiff now argues that prospective damages can reasonably be expected to occur from the Defendant's actions. Despite the Defendant's admission that the April 28, 2010 amendment of § 24-21-560(B) "can only be applied prospectively" (Answer, para. 13), the Defendant also claims "this statute gives the [Defendant] the authority to apply community supervision to individuals sentenced prior to January 1, 2010" (Answer, para. 50). The Plaintiff further relies on the March 6, 2014 response from Matthew Buchanan, which identifies the term "must" as the "specific language in this 2010 amendment to 24-21-560 [that] gives [the Defendant] the authority to apply the amended statute to inmates convicted prior to Jan[uary] 1, 2010" (see March 6, 2014 letter by Matthew Buchanan).

Although the Defendant argues the CSP, "or the consent to search, might not be in existence by the time Plaintiff is released from incarceration" (Motion, p. 3), the Defendant cannot rely on mere conjecture about what the law "might" be in the future. The law existing at time of Plaintiff's offenses governs the Plaintiff's access to and participation in the CSP.

Therefore, Plaintiff has standing in this cause of action because the complaint alleges facts to support the existence of a contract, the actual or anticipatory breach of the contract by Defendant, and the actual or prospective damages caused by the Defendant's actions. Furthermore, there exists at least the ripening seeds of a controversy warranting this declaratory judgment action. Cf. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 SC 449, 455 415 SE2d 801, 805 (1992) (finding a justiciable controversy in a pre-election review of a voter-initiated ordinance). Accordingly, the Defendant's motion to dismiss should be denied.

3. Plaintiff Was Subjected To Ex Post Facto Laws In Violation Of Article I., Sec. 4 Of The S.C. Constitution.

The Plaintiff maintains the Defendant violated Plaintiff's rights under Article I., Sec. 4 of the S.C. Constitution by interpreting and retroactively applying S.C. Code Ann. § 24-21-560(B) (2010) as being terms and conditions of Plaintiff's access to and participation in the CSP, so as to change the quantum of punishment by requiring that Plaintiff consent to be subject to search or seizure, without a search warrant, with or without cause, in order to gain access to and participate in the CSP, a mandatory part of Plaintiff's sentence, (Complaint, para. 77), or alternatively, by interpreting and

applying S.C. Code Ann. : 24-21-560(B) (2010) as being the terms and conditions of Plaintiff's access to and participation in the CSP, so as to effectively deprive the continued protection of substantive legal rights retained and encompassed by the law existing at the time of the offenses of Plaintiff's conviction and sentence (Complaint, para. 78).

The United States and South Carolina Constitutions specifically prohibit the passage of ex post facto laws. State v. Wilson, 315 SC 289, 433 SE2d 864 (1993) (citing U.S. Const. art I., § 10; S.C. Const. art I., : 4). For the law to fall within ex post facto prohibitions, two critical elements must be present. First, the law must be retroactive so as to apply to events occurring before its enactment. Second, the law must disadvantage the offender affected by it. State v. Walls, 348 SC 26, 558 SE2d 524 (2002); also Warren v. Baskerville, 233 F3d 204 (4th Cir 2000). For the ex post facto clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature. State v. Huiett, 302 SC 169, 394 SE2d 486 (1990).

The Plaintiff argues that the first prong of this analysis can be reasonably determined by the Defendant's own admissions. The Defendant admits "this statute gives the [Defendant] the authority to apply [the CSP] to individuals sentenced prior to January 1, 2010" (Answer, para. 50). The Defendant also admits that "specific language in this 2010 amendment to 24-21-560 gives [the Defendant] the authority to apply the amended statute to inmates convicted prior to Jan[uary] 1, 2010" (see March 6, 2014 letter by M. Buchanan). Therefore, by the Defendant's own admissions, the Defendant's interpretation of : 24-21-560(B) (2010) retroactively applies the amended statute to Plaintiff's sentence.

The plaintiff argues that the second prong of this analysis can also be reasonably determined by the Defendant's own admissions. The Defendant admits the consent to search is a "mandatory" condition of the CSP (Answer, para. 57), and that "[t]he inmate is not given a choice" (see March 6, 2014 letter by M. Buchanan). However, by the Defendant's retroactive application of this "mandatory" condition to Plaintiff's sentence, the Plaintiff's access to and participation in the CSP will now be based on an involuntary forfeiture of Plaintiff's constitutional right. Since the Plaintiff is "not given a choice", and the CSP is a mandatory part of Plaintiff's sentence, this waiver of consent is coercive in nature.

The Defendant argues that the Plaintiff now has a "reduced right" (March 6, 2014 letter by M. Buchanan) because of Plaintiff's conviction and sentence. The Defendant also argues that "[t]his change in the law merely amends the supervision guidelines and does not rise to the level of punishment which would implicate ex post facto considerations" (March 6, 2014 letter by M. Buchanan). However, the Plaintiff argues the Defendant's application of § 24-21-560(B) (2010) to Plaintiff's sentence modifies the terms and conditions, as originally imposed by statutory law, by which the Plaintiff is mandated to access and participate in the CSP, thereby retroactively altering and increasing the quantum of punishment. Cf. Weaver v. Graham, 450 US 24, 28, 101 S.Ct. 960, 964, 67 LEd2d 17 (1981); also Fender v. Thompson, 883 F2d 303 (4th Cir 1989). The Courts have unvaryingly refused to permit the retroactive application of new or amended statutes or administrative guidelines which purported to alter preexisting criteria for the determination of probationary release. Marshall v. Garrison, 659 F2d 440, 444-46 (4th Cir 1981).

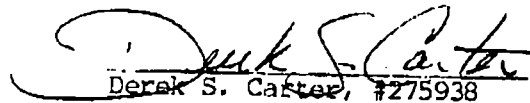
The Plaintiff has standing in this cause of action because the complaint alleges facts to support the Defendant's retroactive application of § 24-21-560(B) (2010) to the Plaintiff's sentence in violation of the Ex Post Facto Clause. The law existing at the time of the offense determines whether an increase of punishment constitutes an ex post facto violation. Miller v. Florida, 482 Us 423, 107 Sct 2446, 96 LEd2d 351 (1987).

Therefore, there exists at least the ripening seeds of a controversy warranting this declaratory judgment action. Cf. Town of Hilton Head Island, supra. Although the Plaintiff is "still incarcerated, and not a part of " the CSP (Motion, pg. 3), and although the Defendant argues the 2010 amendment of the terms and conditions of the CSP "might not be in existence by the time the Plaintiff is released from incarceration" (Motion, pg. 3), the Defendant is now requiring Plaintiff to access and participate in the CSP by an involuntary forfeiture of Plaintiff's constitutional right. Because the Defendant applies this "added...requirement that the [CSP] must include the requirement allowing search and seizures" (July 19, 2013 letter by M. Buchanan), The defendant has retroactively altered and increased the quantum of punishment and implicated ex post facto consideration. Accordingly, the Defendant's motion to dismiss should be denied.

CONCLUSION

Based on the foregoing reasons, Plaintiff has standing in this cause of action under the Declaratory Judgment Act because several concrete issues are present, and the Plaintiff has asserted these legal rights in the complaint. The Defendant has a positive legal duty pursuant to § 24-21-10 et seq., and is responsible for developing terms and conditions of Plaintiff's access to and participation in the CSP that are consistent with statutory law existing at the time of the offenses of Plaintiff's conviction and sentence, which have been denied by the Defendant. The Plaintiff maintains there is a justiciable controversy or at least the ripening seeds of a justiciable controversy calling for the invocation of this declaratory judgment action. Dantzler v. Callison, 227 SC 317, 88 SE2d 64 (1955); see also S.C. Code Ann. § 15-53-30 (1976); Rule 57, SCRPC. The Plaintiff request the Defendant's motion to dismiss be denied.

Respectfully submitted,



Derek S. Carter, #275938
Kershaw C.I., MA-22
4848 Goldmine Hwy.
Kershaw, SC 29067

Kershaw, South Carolina

Plaintiff pro se

August 7, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Derek S. Carter, SCDC #275938,)
)
Plaintiff,)

Civil Action No. 2014-CP-40-3603

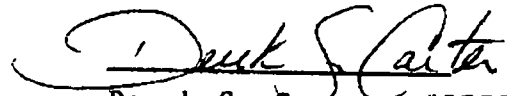
vs.)

CERTIFICATE OF SERVICE

S.C. Department of Probation,)
Parole, and Pardon Services,)
)
Defendant.)

2014 AUG 11 AM 11:15
JEANNETTE W. HICBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

I certify that I have served the Plaintiff's Reply, and the Plaintiff's First Request For Admissions, Rule 36, SCRCF, on the Defendant by depositing copies of the same in the United States Mail, postage prepaid, on August 7, 2014, and addressed to Tommy Evans, Jr., Assistant General Counsel, S.C. Department of Probation, Parole, and Pardon Services, P.O. Box 50666, Columbia, SC 29250.


Derek S. Carter, #275938
Kershaw C.I., Unit MA-22
4848 Goldmine Hwy.
Kershaw, SC 29067

Kershaw, South Carolina
August 7, 2014

Plaintiff pro se

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

NIKKI R. HALEY
 Governor



KELA E. THOMAS
 Director

2221 DEVINE STREET, SUITE 600
 POST OFFICE BOX 50666
 COLUMBIA, SOUTH CAROLINA 29250
 Telephone: (803) 734-9220
 Facsimile: (803) 734-9440
www.dppps.sc.gov/

August 11, 2014

Mr. Derek S. Carter, #275938
 Kershaw C.I Unit MA-22
 4848 Goldmine Hwy.
 Kershaw, SC 29067

RE: Carter v. SCDPPPS
Case No.: 2014-CP-40-3603

Dear Mr. Carter:

This is in response to your letter dated August 7, 2014. In this letter you inquired about our consent to two particular items relating to your cause of action. These actions include:

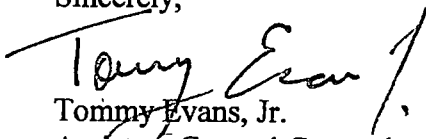
1. That the Defendant shall apply §24-21-560 as being the terms and conditions of Plaintiff access to and participation in the CSP, as originally imposed by the Honorable Judge John W. Kittredge on June 12, 2001.
2. The Defendant shall agree to pay the filing fees for this action.

You are confused regarding the statute as it applies to the Community Supervision Program. The above referenced section is the Community Supervision Program section of the South Carolina Code of Laws; however, there are no term or conditions set within this statute. Pursuant to §24-21-560 "a prisoner's participation shall be at the discretion of the department based upon guidelines developed by the director." The terms and conditions are not set in this statute, but determined by the Department. One of those conditions is that each participant must consent to warrantless searches prior to entering the program. You must consent to this condition, which will not be waived by the Department.

It remains our argument that you do not have standing in your cause of actions, due to the fact you are currently incarcerated and not a part of the CSP program. You cannot raise any Constitutional violations that currently do not apply to you.

Since the Department argues that your lawsuit does not have standing, and should be dismissed, we are not going to consent on the payment of filing fees. With kind regards I remain,

Sincerely,



Tommy Evans, Jr.
Assistant General Counsel

TE:te

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Derek S. Carter, SCDC #275938,)
)
 Plaintiff,)
)
 vs.)
)
 S.C. Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-3603

PLAINTIFF'S FIRST REQUEST
 FOR ADMISSIONS
 RULE 36, SCRCP

RICHLAND COUNTY
 FILED
 2014 AUG 11 AM 11:15
 JEANNETTE W. McBRIDE
 C.C.P. & G.S.

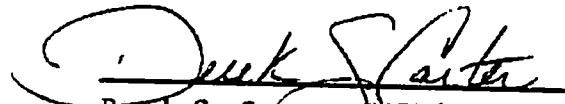
TO: THE DEFENDANT:

The Plaintiff, pro se, pursuant to Rule 36, SCRCP, hereby submits upon the Defendant the Plaintiff's First Request For Admissions to the statements or opinions of facts, application of law to facts, and/or the genuineness of any documents referred to and attached to this request. The Defendant shall, within 30 days after service of this request, serve upon the Plaintiff a written answer or objection addressed to the matter. Any request for admission is admitted when not specifically denied, pursuant to Rule 36(a), SCRCP.

1. Please admit that the S.C. Reduction of Recidivism Act, which included the amended version of S.C. Cod Ann. § 24-21-560(B) (2010), came into effect on April 28, 2010, and can only be applied prospectively.
2. Please admit that when Plaintiff pleaded guilty on June 12, 2001, the terms and conditions of the CSP, as defined By S.C. Cod Ann. § 24-21-560 (1996), did not require Plaintiff to consent to warrantless searches or seizures, with or without cause, by any probation agent employed by the Defendant, or by any other law enforcement officer, in order to gain access to and participate in the CSP.
3. Please admit that the Plaintiff retained his liberty interest against warrantless search or seizures, with or without cause, under the terms and conditions of the CSP, as defined by S.C. Code Ann. § 24-21-560 (1996), when the Plaintiff pleaded guilty on June 12, 2001.

4. Please admit that adding the requirement that Plaintiff must consent to warrantless search and seizures, with or without cause, under the terms and conditions of the CSP, as defined by S.C. Code Ann. § 24-21-560 (2010), results in the imposition of an additional post-conviction punishment for Plaintiff's offenses.
5. Please admit that if S.C. Code Ann. § 24-21-560 (2010) came into effect on April 28, 2010, and can only be applied prospectively, then the Defendant is prohibited from applying the requirement of consenting to warrantless search and seizures, with or without cause, by the EX Post Facto Clauses of the U.S. and S.C. Constitutions.
6. Please admit that the document marked as Attachment A (2 pages) is the July 19, 2013 letter by Matthew Buchanan referred to in the Plaintiff's Complaint and Reply.
7. Please admit that the document marked as Attachment B (2 pages) is the March 6, 2014 letter by Matthew Buchanan referred to in the Plaintiff's Complaint and Reply.

Respectfully submitted,



Derek S. Carter, #275938
Kershaw C.I., Unit MA-22
4848 Goldmine Hwy.
Kershaw, SC 29067

Plaintiff pro se

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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

July 19, 2013

Derek S. Carter #275938
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 29512

RE: Department policy regarding Sections 24-21-560

Dear Mr. Carter,

I am responding to your letter dated July 12, 2013, in which you requested answers to a number of questions pertaining to Section 24-21-560.

You are correct that the 2010 amendments added the requirement that the community supervision program must include the requirement allowing search and seizures. The new law authorizes both probation agents and law enforcement officers to conduct the searches, though it specifically forbids officers from conducting searches for the sole purpose of harassment.

In regards to your specific questions:

1) *Is the amendment applied to all eligible inmates regardless of date of conviction?*

Yes. The statute now specifically reads that the Department of Probation, Parole and Pardon Services must include the requirement.

2) *Does the refusal of such waiver by an eligible inmate result in a denial of access to the community supervision program?*

The inmate is not given a choice. The condition is a mandatory part of the community supervision program.

3) *Is the community supervision program mandatory for all inmates convicted of a "no parole offense"?*


Yes. The statute is clear and unambiguous. The only exceptions are those sentenced to life imprisonment or the death penalty.

4) *Does the SCDPPPS deem §24-21-560, as amended, mandatory?*

Yes. The statute is clear and unambiguous.

I hope this answers your questions. With kind regards, I remain,

Sincerely,



Matthew Buchanan
General Counsel

MB/mb

CC: File

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

NIKKI R. HALEY
 Governor



KELA E. THOMAS
 Director

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www.dppps.sc.gov/

March 6, 2014

Derek S. Carter #275938
 Kershaw C.I., Unit MA-22
 4848 Goldmine Hwy
 Kershaw, SC 29067

RE: Section 24-21-560

Dear Mr. Carter,

This is in response to your letter dated March 3, 2014, in which you asked follow-up questions regarding the 2010 amendments to community supervision.

(1) What specific language in this 2010 amendment to 24-21-560 gives your agency the authority to apply the amended statute to inmates convicted prior to Jan. 1, 2010?

Section 24-21-560(B) states that the Department shall develop terms and conditions for community supervision, but that the conditions *must* include the offender submit to warrantless searches of their person and vehicle. This change in the law merely amends the supervision guidelines and does not rise to the level of punishment which would implicate *ex post facto* considerations.

(2) and (3) Did inmates convicted of a "no parole offense" prior to Jan. 1, 2010 retain their rights under the U.S. and South Carolina constitutions?

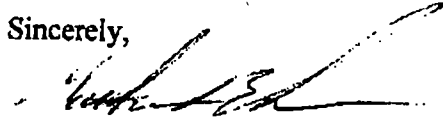
While all individuals retain their rights under the U.S. and South Carolina constitutions, those under supervision have a reduced right on account of their conviction and subsequent sentence.

(4) *Is the 2010 amendment a mandatory part or condition of an inmate's sentence for a conviction of a "no parole offense"?*

Yes, community supervision and the 2010 amendment is mandatory.

I hope this answers your questions. With kind regards, I remain,

Sincerely,



Matthew Buchanan
General Counsel

MB/mb

CC: File

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 Civil Action No.: 2014-CP-40-3603

Derek S. Carter, SCDC#275938,)
)
 Plaintiff,)
)
 v.)
)
 S.C. Department of Probation, Parole and)
 Pardon Services,)
)
 Defendant.)

ORDER
 JEANETTE W. MCENRIE
 C.C.P. & G.S.
 2015 MAR 30 AM 10:33
 RICHLAND COUNTY
 FILED

This matter comes before this Court by way of Defendant's motion to dismiss Plaintiff's summons and complaint. On March 5, 2015, all interested parties appeared before this Court regarding the Defendant's motion to dismiss. Upon hearing from each party this Court has decided to grant the Defendant's motion.

On June 12, 2001, the Plaintiff appeared before the Honorable John W. Kittredge for the offense of homicide by child abuse. Upon completion of this appearance, Judge Kittredge sentenced the Plaintiff to a thirty year period of incarceration. Pursuant to South Carolina law, homicide by child abuse is classified as a C-Felony, which makes this a no parole offense.¹ A person serving a sentence for a no parole offense would not be released from incarceration until having served at least 85% of their sentence. *See*, S.C. Code Ann. §24-13-150 (Supp. 1995). Upon completion of the incarcerated portion of their sentence, that inmate would then be released to a community supervision program operated by the Department of Probation, Parole, and Pardon Services. S.C. Code Ann. §24-21-560(Supp. 1995).

¹ For purposes of definition under South Carolina law, "no parole offense" means a class A, B, C, felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. §24-13-100(Supp. 1995).

As a condition of the community supervision program, the inmate must give consent to search. The South Carolina Code of Laws specifically state:

Before an inmate may be released on parole, he must agree in writing to be subject to search and seizure, without a search warrant, with or without cause, of the inmate's person any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

- (1) any probation agent employed by the Department of Probation, Parole and Pardon Services;
- (2) Any other law enforcement officer.

S.C. Code Ann. §24-21-640(Supp. 2013).

The Plaintiff has filed a summons and complaint alleging that the above referenced statute is in violation of the United States Constitution. The Defendant argues that the Plaintiff lacks standing to make his argument, this court agrees.

In order to prove standing the Plaintiff has the burden of establishing three elements; first, the Plaintiff must have suffered an injury in fact; second, there must be a causal connection between the injury and the conduct complained of; and third, it must be likely that the injury will be redressed by a favorable decision. *Sea Pines Assoc. for the Protection of Wildlife v. S.C. Dept. of Natural Resources*, 345 S.C. 594, 550 S.E.2d 287 (2001). The Plaintiff is not due to be released until April 19, 2026, so he has not yet participated in the Community Supervision program; therefore, not required to a consent to search. He has thereby suffered no harm due to this program, so he has no damages, he lacks standing to bring this cause of action.

To have standing one must have a personal stake in the subject matter of the lawsuit, one must be a real party in interest. *Sea Pines*, at 600. The Plaintiff will not become a part of the community supervision program for another eleven years. Since he is incarcerated, and not a part of the program, he does not have a personal stake in the consent to search issue; therefore, he should be not allowed to bring a cause of action regarding the constitutionality of the statute.

The Plaintiff might become a part of the community supervision program in the future, so he does have a future interest in the consent requirement; however, currently he only has a passing interest. He must have more than a passing interest to show standing. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in this action. *Id.* The Plaintiff files a summons and complaint arguing the constitutionality of a program that he is not a participant, none of the conditions of this program pertains to him; therefore, he lacks standing. The community supervision program has not caused the Plaintiff any damages, so he cannot raise a cause of action regarding the program's constitutionality. This summons and complain must be subject to dismissal.

The Plaintiff also filed a motion to compel seeking material mentioned in a previous request for the production of documents. The Defendant has argued that since the Plaintiff remains incarcerated, and not yet in the community supervision program, the requested documents are either unavailable or irrelevant.

The information collected and maintained by the agency is considered privileged, and only releasable through consent of the Court or the Director. The South Carolina Code of Laws specifically state:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Ann. §24-21-290.

Information obtained by the Defendant is also not admissible in court. *State v. Hook*, 356 S.C. 421, 590 S.E.2d 25 (2004). Since the Plaintiff is not on community supervision he lacks standing to

raise a cause of action regarding the programs constitutionality. This lack of standing causes the requested information to be irrelevant. The Plaintiff is also not currently under the Defendant's supervision, so the Defendant currently does not have some of the requested information. Since these records are either irrelevant or unavailable the motion to compel is dismissed.


CONCLUSION

Based on the foregoing arguments this Court finds the Plaintiff is currently incarcerated; and, therefore, lacks standing to bring this cause of action. Due to him not currently being under supervision, the requested information is either not available, or irrelevant, so the Plaintiff is not entitled the requested information.

IT IS THEEFORE ORDERED, that the Plaintiff's summons and complaint is hereby dismissed with prejudice.

IT IS ALSO ORDERED, that the Plaintiff's motion to compel is dismissed.

IT IS SO ORDERED this 24 day of March, 2015


The Honorable Ernest J. Kinard
Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case Number: 2014-CP-40-3603

Derek Carter,)
)
Plaintiff,)

v.)

South Carolina Department of Probation,)
Parole, and Pardon Services,)
)
Defendant.)

CERTIFICATE OF SERVICE

2015 MAR 30 AM 10:33
ANETTE W. HORN
C.C.P. & G.S.

RICHLAND COUNTY
FILED

I, Dawn Nichols, Executive Administrative Assistant with the South Carolina Department of Probation, Parole and Pardon Services, hereby certify that this 25th day of March, 2015, I served the following documents:

1. Order Dated March 24, 2015; and
2. Certificate of Service.

by first class mail, postage prepaid as follows.

Derek Carter, #275938
Kershaw Correctional Institution-Unit MA-22
4848 Goldmine Highway
Kershaw, South Carolina 29067



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

April 2, 2015

The Honorable J. Ernest Kinard, Jr.
Judge, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main St.
Columbia, SC 29201-9201

Re: Carter v. SCDPPPS,
Civil Action No. 2014-CP-40-3603
Plaintiff's Motion to Alter or
Amend the Judgment, Rule 59(e), SCRCF

Dear Judge Kinard:

Enclosed, please find for filing and consideration one original and one copy of the Plaintiff's Motion to Alter or Amend the Judgment, Rule 59(e), SCRCF. Please have the clerk stamp-clock and return a copy for my records.

While I respect your decision, I disagree with the Order as drafted by the Defendant. I trust you will carefully consider this motion with due diligence and fairness.

In closing, please contact me if you have any questions.

Thank you. Sincerely, I am,



Derek S. Carter, #275938
Kershaw C.I., Unit MB-27
4848 Goldmine Hwy
Kershaw, SC 29067

/dsc

Enc: as stated

cc: Tommy Evans, Jr., Esq.
File

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Derek S. Carter, SCDC #275938,)	Civil Action No. 2014-CP-40-3603
)	
Plaintiff,)	
)	
vs.)	PLAINTIFF'S MOTION TO ALTER OR AMEND
)	THE JUDGMENT, RULE 59(e), SCRPC
S.C. Department of Probation,)	
Parole, and Pardon Services,)	
)	
Defendant.)	

This matter comes before the Court pursuant to a Summons and Complaint for a declaratory judgment filed on June 3, 2014. Defendant made its Answer and Motion to Dismiss on July 22, 2014, requesting that the Complaint be summarily dismissed. On August 7, 2014, Plaintiff filed a Reply stating his objections to Defendant's motion, specifically addressing the Defendant's misrepresentation that Plaintiff is arguing S.C. Code Ann. § 24-21-640 (Supp. 2013) of the South Carolina Reduction of Recidivism Act of 2010 is unconstitutional. A hearing was held on March 5, 2015 at the Richland County Courthouse.

On March 9, 2015, Defendant submitted a proposed Order to Plaintiff with an accompanying letter requesting that Plaintiff inform Defendant "of any request for changes within the next 7 days." Plaintiff notified Defendant in writing of the requested changes on March 16, 2015; a copy was forwarded to the Honorable Judge J. Ernest Kinard, Jr. the same day.

Plaintiff received a final signed Order, dated March 24, 2015, for the above matter on March 30, 2015. That upon review of this Order, Plaintiff would make the following motion to alter or amend the judgment on the grounds:

1. That Defendant has committed intrinsic fraud by willfully misrepresenting a material fact at issue in this cause of action. The Order incorrectly states, "The Plaintiff filed a summons and complaint alleging that the above referenced statute [§ 24-21-640 (Supp. 2013)] is in violation of the United States Constitution." See Order, pg. 2. Instead, Plaintiff has consistently argued the Defendant has changed the quantum of punishment by requiring that Plaintiff consent to be subject to search or seizure, without a search warrant, with or without cause, in order to access and participate in the CSP pursuant to the amended language of S.C. Code Ann. § 24-21-560 (Supp. 2010). See Complaint, para. 70-78; also Reply, pg. 1.
2. That Defendant has committed intrinsic fraud by willfully misrepresenting the Court's judgment rendered against Plaintiff's Motion to Compel. The Order incorrectly states, "Plaintiff's motion to compel is dismissed." See Order, pg. 4. Instead, the Court ruled that "Plaintiff's motion to compel moot due to defendant's motion to dismiss being granted." See attached SCRCF Form 4C (10/2011).
3. That Defendant has committed intrinsic fraud by willfully misrepresenting the Court's judgment rendered against Plaintiff's Summons and Complaint. The Order incorrectly states, "Plaintiff's summons and complaint is hereby dismissed with prejudice." See Order, pg. 4. Instead, the Court dismissed the case without prejudice, ruling my challenge was not ripe for review under the Uniform Declaratory Judgments Act.

Therefore, based upon the foregoing facts, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff respectfully prays this Court will alter or amend the judgment by ordering:

- A. That the Court's Order accurately reflects the material fact at issue in this cause of action, as expressly alleged in the Complaint, para. 70-78, and above at paragraph 1.
- B. That the Court's Order accurately reflects the Court ruled "Plaintiff's motion to compel moot due to defendant's motion to dismiss being granted," and that all further language referencing Plaintiff's motion to compel in the Order (pg. 3, para. 2 through pg. 4, para. 1) be omitted from the Order.
- C. That the Court's Order accurately reflects the Court ruled Plaintiff's summons and complaint was dismissed without prejudice, ruling Plaintiff's challenge was not ripe for review under the Uniform Declaratory Judgments Act. Dismissing the case with prejudice would unlawfully bar a future claim.

Respectfully submitted,



Derek S. Carter, #275938
Kershaw C.I., Unit MB-27
4848 Goldmine Hwy
Kershaw, SC 29067

Plaintiff pro se

Kershaw, South Carolina

April 2, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Derek S. Carter, SCDC #275938,)
)
 Plaintiff,)
)
 vs.)
)
 S.C. Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-3603

CERTIFICATE OF SERVICE

I certify that I have served the Plaintiff's Motion to Alter or Amend the Judgment, Rule 59(e), SCRC, on the Defendant by depositing a copy of the same in the United States Mail, postage prepaid, on April 2, 2015, addressed to the Defendant's counsel, Tommy Evans, Jr., Assistant General Counsel, S.C. Department of Probation, Parole, and Pardon Services, P.O. Box 50666, Columbia, S.C. 29250.

Kershaw, South Carolina
 April 2, 2015



Derek S. Carter, #275938
 Kershaw C.I., Unit MB-27
 4848 Goldmine Hwy
 Kershaw, SC 29067
 Plaintiff pro se

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Derek S. Carter #275938)
)
 Plaintiff.)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-40-3603

**ORDER DENYING PLAINTIFF'S
 MOTION TO RECONSIDER**


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 2015 MAY 18 AM 11:59

This matter comes before the Court by way of Plaintiff's Motion to Reconsider pursuant to Rule 59(e), SCRCPP. Specifically, Plaintiffs ask this Court to reconsider its Order of Dismissal filed March 16, 2015.

After consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCPP, to Reconsider this Court's Order filed March 16, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
 April 22, 2015


 J. Ernest Kinard, Jr., Judge
 Fifth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED
NOV 23 2015
SC Court of Appeals

Appellate Case No. 2015-001162

Derek S. Carter.....Appellant,

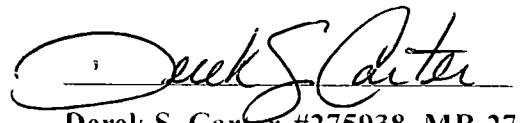
v.

South Carolina Department of Probation, Parole, and Pardon Services.....Respondent.

CERTIFICATE OF APPELLANT

I undersigned certifies that this Record on Appeal complies with the South Carolina Appellate Court Rules.

November 19, 2015



Derek S. Carter, #275938, MB-27
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S.C. 29067
Appellant pro se