

ALAN WILSON
ATTORNEY GENERAL

May 5, 2017

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MAY 05 2017

S.C. SUPREME COURT

VIA HAND-DELIVERY

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

RE: Shaquan A. Thompson v. State – Appellate Case No. 2016-001121

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Motion to Consent to Relief Requested and Remand for Consideration of Time-Served Credit, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
S.C. Bar No. 79054

LAM/dgr
Enclosures

cc: David Alexander, Esquire
Victim Services

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2016-001121

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SHAQUAN A. THOMPSON,

S.C. SUPREME COURT

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO CONSENT TO RELIEF REQUESTED AND REMAND FOR
CONSIDERATION OF TIME-SERVED CREDIT**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Petitioner was indicted during the February 2013 term of the Anderson County Grand Jury for armed robbery (2013-GS-04-00379). App. 49. On December 7, 2012, Petitioner was released on bond and placed on home detention to be monitored electronically. App. 22. On April 23, 2014, Petitioner appeared before the Honorable J. Cordell Maddox, Jr., circuit court judge, and pled guilty to the lesser-included offense of attempted armed robbery. App. 3-13. Bruce Byrholdt, Esquire (Plea Counsel), represented Petitioner. App. 3. At the beginning of the plea hearing, Plea Counsel incorrectly informed the plea court Petitioner was not eligible for credit for time served on monitored home detention. App. 3. Petitioner was sentenced, in

accordance with the State's recommendation, to a term of eight years' imprisonment with credit for thirty-six days served during the period of incarceration prior to his release on bond. App. 50. Petitioner did not appeal his guilty plea or sentence. App. 43.

II.

Thereafter, Petitioner filed an application for post-conviction relief on December 3, 2014, alleging he was being held in custody unlawfully based on ineffective assistance of counsel; specifically, Petitioner alleged Plea Counsel gave him erroneous advice about parole eligibility and incorrectly advised the plea court he was ineligible for credit for time served on monitored home detention. App. 12. Respondent made its Return on September 17, 2015, requesting an evidentiary hearing be held. App. 43. An evidentiary hearing into the matter was convened on February 9, 2016, at the Anderson County Courthouse, before the Honorable Brooks P. Goldsmith, circuit court judge. App. 43. Petitioner was present at the hearing and was represented by Hugh W. Welborn, Esquire. App. 43. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. App. 43. At the conclusion of the evidentiary hearing, the post-conviction relief court denied Petitioner's application from the bench. App. 39. In its subsequent order of dismissal, filed May 17, 2016, the post-conviction relief court denied and dismissed Petitioner's both allegations, finding Plea Counsel had not erroneously advised Petitioner regarding parole eligibility and finding Petitioner was not entitled to credit for time served while on monitored home detention. App. 43-48.

III.

Petitioner timely appealed the order of dismissal, and filed a Petition for Writ of Certiorari on January 19, 2017. PWC 1. In his Petition, Petitioner argues Plea Counsel was constitutionally ineffective for erroneously informing the plea court Petitioner could not receive

credit for time served while on monitored home detention pursuant to S.C. Code Ann. § 24-13-40. In his prayer for relief, Petitioner requests this Court remand the matter to circuit court for a determination as to whether he is entitled for credit for time served on monitored home arrest.

IV.

While preparing the State's Return to the Petition for a Writ of Certiorari, undersigned counsel (who recently took over this case from the previous counsel who handled the evidentiary hearing) discovered the post-conviction relief court's order of dismissal contained an error of law. Specifically, the post-conviction relief court erred as a matter of law in finding Petitioner was not eligible for discretionary consideration of whether he was entitled credit for time served while under monitored home detention. Pursuant to S.C. Code Ann. § 24-13-40, which was in effect at the time of Petitioner's guilty plea and sentencing, "a prisoner . . . **may** be given [credit] for any time spend under monitored house arrest." (emphasis added). In light of that statutory provision, the sentencing court could have exercised its discretion to award Petitioner credit for the time he served prior to trial on monitored house but mistakenly concluded it did not have the discretion to do so based on Plea Counsel's erroneous representations. Accordingly, the post-conviction relief court's finding Petitioner was not entitled to relief was incorrect as a matter of law.

V.

Because Petitioner was wrongly denied an opportunity for the sentencing judge to decide whether to award credit for the time he served prior to trial on monitored house arrest, the State concedes this Court should grant the relief sought in the Petition for Writ of Certiorari and remand Petitioner's case to the court of general sessions for a hearing to determine whether

Petitioner should discretionarily be awarded credit for his time on monitored house arrest as permitted—but not mandated—by S.C. Code Ann. § 24-13-40.

WHEREFORE, Respondent prays this Court remand this case to the court of general sessions for a determination by the original plea court whether Petitioner should discretionarily be awarded credit for his time on monitored house arrest as permitted by S.C. Code Ann. § 24-13-40.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
Lindsey A. McCallister

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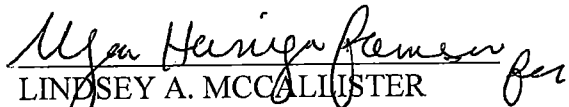
Respondent.

PROOF OF SERVICE

I, Lindsey A. McCallister, certify that I have served the within Motion to Consent to Relief Requested and Remand for Consideration of Time-Served Credit by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 5th day of May, 2017.


LINDSEY A. MCCALLISTER
Assistant Attorney General

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