

# The Supreme Court of South Carolina

Shaquan A. Thompson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-001121

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## ORDER

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Petitioner has filed a petition for a writ of certiorari seeking review of the post-conviction relief judge's ruling that defense counsel was not ineffective for failing to request credit towards petitioner's sentence for time served on monitored house arrest because petitioner was not eligible for such credit under S.C. Code Ann. § 24-13-40 (Supp. 2016). Petitioner requests this Court issue a writ of certiorari and remand the case to the circuit court to determine whether petitioner is entitled to credit for time spent on house arrest.






The State has filed a motion in which it agrees the post-conviction relief judge erred as a matter of law in finding petitioner was not eligible for credit for time served on monitored house arrest pursuant to section 24-13-40 at the time petitioner pled guilty. The State consents to the relief sought by petitioner and requests this Court remand the case to the court of general sessions for a determination, at the discretion of the court, whether petitioner should be awarded credit for the time he spent on monitored house arrest prior to his guilty plea. *See* § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and *may be given* for any time spent under monitored house arrest.")(Emphasis added).

Based on the State's motion, *State v. Varner*, 310 S.C. 264, 423 S.E.2d 133 (1992),<sup>1</sup> and the fact that the amendment to section 24-13-40 allowing judges the

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<sup>1</sup> In *Varner*, this Court stated the following:

discretion to award credit for time spent on monitored house arrest became effective on June 7, 2013, prior to petitioner's guilty plea, we hereby grant the petition for a writ of certiorari, dispense with further briefing, reverse the post-conviction relief judge's finding that petitioner was not eligible, at the discretion of the plea judge, to receive credit for the time spent on monitored house arrest, and remand to the Honorable J. Cordell Maddox, Jr. for consideration of whether such credit should be given.

  
\_\_\_\_\_ C.J.  
  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.

Columbia, South Carolina

July 25, 2017

cc:

David Alexander, Esquire

Lindsey Ann McCallister, Esquire

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In the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed. *State v. Addington*, 18 S.C.L. (2 Bail.) 516, 518 (1831); *see also State v. Cooler*, 30 S.C. 105, 8 S.E. 692 (1889) (trial judge erred by not imposing the punishment in effect at time of sentencing). The correct penalty is the one in effect at the time of sentencing, even if the penalty is repealed while appeal is pending. *State v. Hamblin*, 4 S.C. (4 Rich.) 1, 3 (1872). Thus, a criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced. *See Addington*, 18 S.C.L. (2 Bail.) at 518.