

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

Case No. 2016-CP-40-6916

Appellate Case No. 2017-002577

RECEIVED

JAN 09 2018

SC Court of Appeals

Charles Eugene Carpenter.....Appellant,

vs.

South Carolina Department of Corrections and
The State of South Carolina..... Respondents.

**MEMORANDUM IN RESPONSE TO
RULE 203(d)(1)(B)(vi), SCAR INQUIRY**

Appellant Charles Eugene Carpenter (hereafter "Carpenter") has appealed from the orders of the Honorable Robert E. Hood; the first filed on October 2, 2017, and the subsequent order dated December 18, 2017 denying Carpenter's motions to reconsider. Notice of Appeal was filed on December 20, 2017, the same date Carpenter filed a Petition for Certification of Appeal to the Supreme Court and a Petition for Original Jurisdiction. Notice of those two filings on that date was provided to the Court of Appeals on December 27, 2017. The following day, the Honorable Jenny Abbott Kitchings mailed a deficiency notice to counsel for Carpenter, citing Rule 203(d)(1)(B)(vi), SCAR and requesting a written explanation as to why the circuit court's determination that habeas corpus relief should have been raised in an application under the Post-

Conviction Relief Act was improper. The following represents Carpenter's response to that notice and request for "sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the circuit court was improper."

BACKGROUND FACTS

Carpenter was arrested and charged in state court with trafficking in marijuana and cocaine on November 27, 1989. On April 7, 1990, Carpenter signed a plea agreement with the State, the terms of which provided that Carpenter would enter a plea of guilty to two counts¹ of violating S.C. Code Ann. § 44-53-370. Pursuant to the plea agreement, the State agreed to recommend concurrent sentence of 25 years on each indictment. The plea agreement also required Carpenter to cooperate with law enforcement in its continuing investigation. Circuit Court Judge Edward Cottingham accepted the plea as recommended on April 7, 1990, but imposed no sentence on that date.

Judge Cottingham re-convened the matter on June 4, 1990, at which time Carpenter was sentenced to 25 years on Indictment 1990-GS-47-5002. The State asked that a sentence of 25 years consecutive be imposed on Indictment 1990-GS-47-5001, based on Carpenter's alleged breach of the term of the plea agreement as to cooperation following the April acceptance of the plea. Judge Cottingham declined, and instead indicated he was going to take testimony at a later date to determine whether Carpenter had complied with the plea agreement and, if not, he stated his intention was to "change his sentence to speak to his lack of cooperation."²

¹ Count one was charged in Indictment 90-GS-47-5001 (trafficking in marijuana) and count two was Indictment 90-GS-47-5002 (trafficking in cocaine).

² See transcript of hearing held 6/4/90 (Tr. page 10, lines 23-24), included as Exhibit C to Carpenter's complaint filed in the trial court (2016-CP-40-6916)

That later date became August 9, 1990, when the parties appeared before Judge Cottingham again, with the State presenting evidence from witnesses intended to address its assertion that Carpenter had breached the plea agreement. Carpenter's counsel objected to the court's authority to reconvene the matter. The trial judge said the purpose of the hearing was to determine whether to "enhance" Carpenter's sentence on Indictment 90-GS-47-5001. He also characterized the hearing as one to determine whether Carpenter should be held in "contempt" for violating the plea agreement. After taking testimony, the trial judge sentenced Carpenter to 25 years consecutive for Indictment 90-GS-47-5001.

In his complaint for declaratory relief and Petition for Writ of Habeas Corpus filed in the Richland County Court of Common Pleas on November 18, 2016, Carpenter asserted that the trial judge lacked authority to reconvene the hearing after the expiration of the term of court during which the June 4, 1990 proceedings occurred.³ Because the trial judge lacked authority to conduct those proceedings, Carpenter asserted that the second 25-year consecutive sentence is an illegal sentence and he is being unlawfully detained by SCDC, having now been incarcerated for longer than the 25-year length of the sentence lawfully imposed on 90-GS-47-5002.

Carpenter also asserted multiple violations of his rights by SCDC during his term of imprisonment since 1990, based both on SCDC making a change to his sentence after he had served twenty years of his sentence, and also on the ground of equal protection, asserting that his earned education and work credits were removed from his record and he was not given credit

³ On August 9, 1990, during that second hearing, the trial judge conceded that he may be overstepping his authority in just the manner Carpenter now challenges. Judge Cottingham stated "As you well know, ordinarily during a week of general sessions court our Supreme Court has said that the term ends on Friday and the judge cannot, thereafter, change the sentence later. I don't know what our Supreme Court will say in connection with this." See transcript of hearing held 8/9/90 (Tr. p. 141, line 21 – p. 142, line 1), included as Exhibit E to Carpenter's complaint filed in the trial court (2016-CP-40-6916).

toward his sentence various credits. Carpenter also asserted that another defendant sentenced under the same indictment as he, with the same sentence imposed, was given credits for good time, education, and work, and was released from the Department's custody in 2001, while Carpenter remains incarcerated.

The South Carolina Department of Corrections (SCDC) filed a motion to dismiss. Upon consideration of SCDC's motion to dismiss, the Honorable Casey Manning issued an order dated February 23, 2017 that determined that the Attorney General was a necessary party to the action, and as such must be added before further relief could be considered. After the AG was made party to the action, the AG filed its own motion to dismiss, and the motions of both defendants were heard by the Honorable Jean H. Toal, acting in a Special Circuit Court Judge capacity.

ARGUMENT

A. CARPENTER IS NOT BARRED FROM PRESENTING HIS CLAIMS IN CIRCUIT COURT BY STATUTE OR PRIOR CASELAW, AS CONFIRMED BY SPECIAL CIRCUIT COURT JUDGE TOAL UPON HER PRIOR CONSIDERATION OF SUCH AN ARGUMENT.

In their motions to dismiss, SCDC and the AG both directly challenged Carpenter's ability to bring his claims in the circuit court. Carpenter cited authority in his filed memorandum opposing SCDC's motion to dismiss, setting forth the basis upon which he contended the circuit court, and now Court of Appeals reviewing the order issued by the circuit court, has subject matter jurisdiction. In lieu of repeating that authority verbatim, Carpenter attaches a copy of that memorandum, and incorporates by reference the argument set forth in Section I of that memorandum. **See Exhibit 1.**

The Respondents' arguments, and those of Carpenter just incorporated herein, were directly considered by Special Circuit Court Judge Toal at her hearing held April 6, 2017. The

order issued as a result of that hearing accepted Carpenter's contention that he was appropriately before the circuit court on his habeas claim while denying the motions to dismiss. **Exhibit 2.** The order did not do so in mere summary fashion, but instead included citation of authority to support the conclusions of law contained therein, which are equally applicable now that the same issue has been elevated to the Court of Appeals.

B. CARPENTER HAS SOUGHT DIRECT CONSIDERATION BY THE STATE SUPREME COURT, TO WHICH THE COURT OF APPEALS SHOULD DEFER UNTIL A RESPONSE IS RECEIVED.

As noted at the outset, Carpenter has filed a Petition for Certification of Appeal to the Supreme Court and a Petition for Original Jurisdiction. Although Carpenter has a reasonable basis for his contention that the Court of Appeals has jurisdiction over this matter and should hear his appeal of the underlying circuit court orders, any dismissal of this appeal made by order of the Court of Appeals while requests are pending in the State Supreme Court would be premature. As such, even if this Court were inclined to reject the argument set forth herein and move to dismiss the appeal on the basis of Rule 203, Carpenter respectfully requests that such action be stayed pending further instruction or action by the State Supreme Court in response to Carpenter's filings therein.

CONCLUSION

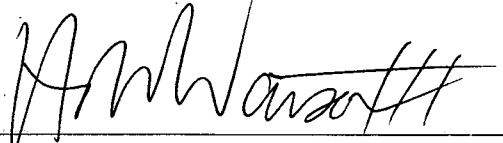
It is respectfully submitted that Judge Toal, as a former Chief Justice of our highest court, has an obvious and extensive understanding of the manner in which disputes are handled within the various courts within South Carolina. The argument made by Carpenter in his memorandum and then personally before her, which was later adopted and incorporated in her subsequent order denying Respondents' motion to dismiss on the grounds that the circuit court was not the proper

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forum for Carpenter's claims, is now respectfully submitted as at least an "arguable basis for asserting that the determination by the circuit court" to the contrary was improper.

Alternatively, Carpenter's pending requests to the State Supreme Court should act as a bar to any dismissal by the Court of Appeals on the basis of Rule 203, SCACR.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

January 8, 2018

STATE OF SOUTH CAROLINA)

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Charles Eugene Carpenter)

Case No. 2016-CP-40-6916

Plaintiff)

vs.)

South Carolina Department of)
Corrections)

**MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Defendant)

2017 FEB 15 AM 10:45
DEPARTMENT OF CORRECTIONS
RICHLAND COUNTY
FILED

Plaintiff submits the following arguments in opposition to Defendant South Carolina Department of Corrections' (hereafter "SCDC") Motion to Dismiss pursuant to Rules 12(b)(1), (3), (6), and (9), SCRPC. Plaintiff respectfully requests that SCDC's motion be denied in its entirety.

ARGUMENT

I. These matters are properly before this Court, which has subject matter jurisdiction over the claims made in this declaratory judgment action.

In its motion, SCDC reduces and overgeneralizes Plaintiff's causes of action into a mere improper sentence calculation claim, then asserts all such matters are properly handled administratively, with appeals to the Administrative Law Court (hereafter "ALC"), citing Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 750 (2000). But Al-Shabazz has never operated as an impenetrable bar to inmate access to circuit court for all claims raised. SCDC cites one such example in its own motion, Slezak v. Dept. of Correction, 361 S.C. 327, 605 S.E.2d 506 (2004). That decision confirms that administrative grievances are appealed to the ALC, but certainly does not stand for the overly broad reading attributed to it by SCDC, which implies that any and every action filed by a current inmate must go through the ALC.

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In *Slezak*, the Supreme Court dismissed one component of the inmate's case, stating that it should be brought to circuit court within a declaratory judgment action, not within the ALC matter then up on review. *Id.* at 332. In *Nelson v. Ozmint*, 702 S.E.2d 369, 390 S.C. 432 (2010), an inmate sought a writ, challenging the calculation of credits for time served without first going through the ALC. In a recent matter, the Supreme Court addressed an action brought pursuant to the Declaratory Judgment Act in which an inmate challenged the circumstances regarding his conviction on kidnapping, which was entertained by the Court separate from classification questions stemming from those circumstances that would be properly treated as administrative issues. *Thompson v. State*, Op. No. 27610 (S.C. Sup. Ct. filed Mar. 2, 2017) (Davis Adv. Sh. No. 9 at 25). In other words, Plaintiff can obtain declaratory relief, but if those judicially determined declarations are not acted upon properly, he would only then have to address the matter internally and administratively.

In *Delahoussaye v. State*, 369 S.C. 522, 633 S.E.2d 158, 160 (2006), the Supreme Court affirmed a lower court ruling that a case including a claim that a sentence had expired was not required to be heard by the ALC under *Al-Shabazz*. Similarly, Plaintiff in this matter is not challenging a condition of imprisonment, but imprisonment itself. Plaintiff is being held in custody unlawfully at this point; an internal grievance proceeding is not sufficient to address this issue. SCDC has already made clear its opposition to the merits of Plaintiff's claim.

II. Venue is proper in this county.

As referenced above, SCDC's first articulated ground for dismissal is that the matter should be before the Administrative Law Court instead of in circuit court. Alternatively, SCDC challenges whether venue in Richland County is proper; instead seeking to have it moved to Chesterfield County, the current location in which Plaintiff is being held illegally.

SCDC cites the venue provision under the South Carolina Tort Claims Act in support of its contention that venue in Richland County is improper. That venue provision provides "Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred." S.C. Code § 15-78-100(b) (emphasis added). This action is not brought pursuant to that chapter, the Tort Claims Act, since it is not an action asserting a claim for damages. See S.C. Code § 15-78-100(b) (defining "Claim" for purposes of the Tort Claims Act to include demands "for money only, on account of loss, caused by the tort" of any employee of the State or a political subdivision thereof). Instead, as articulated clearly in the Complaint, this is an action pursuant to S.C. Code § 15-53-10 *et seq.*, the Uniform Declaratory Judgments Act. See Complaint, ¶ 4. Insertion of the Tort Claims Act into this action is an instinctive reaction by this agency, without any applicable basis therefore whatsoever.

Even if the particular statute cited by the SCDC were applied, it would not require dismissal for improper venue. This is not a claim related to a discrete, singular act or omission on the part of a particular actor at the facility where Plaintiff is housed, but rather a continuing violation of Plaintiff's rights instigated and carried out by SCDC administration. There is no single act or omission as, but an ongoing illegality arising through the actions of administrative personnel throughout SCDC as it relates to Plaintiff and attempts to alter his sentence long after he was taken into custody. That action, and the responsibility therefore, starts with the headquarters for SCDC, which are in Richland County. In significant measure it also dwells with the Classification and Inmate Records division of SCDC, which is upon information and belief the division within SCDC that retains the centralized listing of relevant dates for the agency as a whole, including the dates for release of inmates such as Plaintiff.

Administrative personnel at SCDC have so manipulated Plaintiff's records as to prohibit

his release when such release from custody is overdue. In so doing, they have violated Carpenter's constitutional rights. *Tant v. South Carolina Department of Corrections*, 408 S.C. 334, 759 S.E.2d 298 (2014). This action, however, seeks no damages, merely asks the court to recognize his illegal detention and order him released from custody¹.

III. Plaintiff has set forth detailed facts sufficient to constitute causes of action against Defendant related to its unlawful continuing detention of Plaintiff.

Defendant SCDC's third basis for its motion to dismiss is a mere conclusory statement that Plaintiff has failed to state facts sufficient to constitute a cause of action against SCDC, but the Court should "liberally construe the Declaratory Judgment Act so as to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships." *Thompson v. State*, Op. No. 27610 (S.C. Sup. Ct. filed Mar. 2, 2017) (Davis Adv. Sh. No. 9 at 25)(citing *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995)).

Likewise, pleadings "should be construed liberally and the Court must presume all well pled facts to be true." *Overcash v. SCE&G*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). If the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The action should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Plaintiff has not submitted a bare bones complaint, but rather fifteen full pages of

¹ Relief is sought both pursuant to the Declaratory Judgment Act, and also pursuant to the Petition for Writ of Habeas Corpus, which is addressed via a separate memorandum.

allegations and more than twenty supporting exhibits. There is a wealth of information presented, all of which when taken as true constitutes the presentation of several claims worthy of consideration and determination under the declaratory judgment act. The pleading amply demonstrates the controversy between the parties, which continues daily as Plaintiff's illegal detention continues. If the sentencing judge lacked authority to enter the (second, consecutive 25-year) sentence as alleged, which SCDC is currently enforcing, then the Court will have to enter a declaration finding that sentence to be void, and directing action in conformance therewith by SCDC. If SCDC unilaterally, without notice and an opportunity to be heard, changed Plaintiff's sentence (which it indisputably did), then Plaintiff's rights have been violated and corrective action must be mandated.

SCDC merely responds by asserting that it "lacks the power authority, and knowledge to defend against the allegations regarding improper jurisdiction of the trial judge." That is neither an articulation that there are insufficient factual allegations nor an allegation that those facts that were alleged failed to articulate at least one necessary element of every cause of action presented. That statement is, rather, more akin to an acknowledgment that SCDC lacks information and/or the legal basis with which to contradict the detailed factual allegations and claims included by Plaintiff in his complaint. SCDC has to implement the sentence that was imposed; it necessarily must construe it, and if this court agrees that the sentencing judge lacked jurisdiction, SCDC is bound by that determination. It may not desire the prospect of having to do so, but it surely can, and has been put on notice as to the demands made and factual support therefore.

IV. All parties needed for a just adjudication of the claims raised are joined, and the other claimed to be necessary has declined to join after notice was afforded.

Defendant SCDC has moved for dismissal for failure to add the Attorney General as a party



“needed for just adjudication” pursuant to Rule 19, SCRCP. That rule requires joinder of parties when it is determined that:

- (1) in his absence complete relief cannot be accorded among those already parties, or
- (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may
 - (i) as a practical matter impair or impede his ability to protect that interest or
 - (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

A. Complete relief may be effectuated among the existing parties.

The Attorney General would not be required to take any action, or refrain from any action, regardless of the outcome of this litigation. If Plaintiff prevails as to its allegations set forth in the complaint, then a writ of habeas corpus would be issued, requiring SCDC to immediately release Plaintiff. Plaintiff has sought other relief in the form of declarations from this Court, which would all have operative effect only upon SCDC, the agency currently maintaining custody over Plaintiff during the unlawful extension of his sentence past its legitimate completion date.

B. The Attorney General has not claimed an interest in this matter, and SCDC is not a risk of incurring inconsistent obligations.

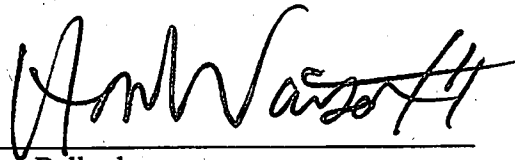
While SCDC has claimed that the Attorney General has an interest in this matter, the Attorney General has not asserted as much. That is so even though the Attorney General’s office was properly served with a copy of the filed complaint in this action via certified mail on November 23, 2016. That silence speaks to the practical effects of the prayed for relief in this matter, which only affects Plaintiff and SCDC, without any broader, repeated application to the State as a whole. Complete relief can be afforded with the parties to this action, without risk that SCDC would be subject to later inconsistent obligations.

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CONCLUSION

For the reasons set forth hereinabove, and such argument as is advanced at the hearing on this matter currently scheduled, Plaintiff requests that Defendant SCDC's Motion to Dismiss be denied in its entirety, with SCDC directed to file an Answer.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

February 10, 2017

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4006916

Charles Eugene Carpenter

South Carolina Department Of Corrections

State Of South Carolina

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.
- 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 _____

RICHLAND COUNTY
2017 APR 25 PM 1:30

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 :

see attached 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.

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

John Stone

Judge Code 3758

Date

4/20/17

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 26 day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard

Damon Christian Wlodarczyk

James Clayton Mitchell III

ATTORNEY(S) FOR THE PLAINTIFF(S)

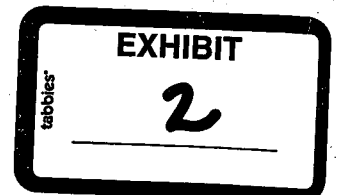
Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. McBride

SCANNED



agreement, the State agreed to recommend concurrent sentence of 25 years on each indictment. Circuit Court Judge Edward Cottingham accepted the plea as recommended on April 7, 1990, but imposed no sentence.

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The plea agreement required Carpenter to cooperate with law enforcement in its continuing investigation. Judge Cottingham re-convened the matter on June 4, 1990, at which time the State asserted that Carpenter was in violation of his plea agreement. On that date, Judge Cottingham sentenced Carpenter to 25 years on Indictment 1990-GS-47-5002.² The State asked that a sentence of 25 years consecutive be imposed on Indictment 1990-GS-47-5001 based on Carpenter's breach of the plea agreement. Instead, Judge Cottingham indicated he was going to delay the matter to a later date and take testimony to determine whether Carpenter had complied with the plea agreement and, if not, he stated his intention to "change his sentence to speak to his lack of cooperation." It does not appear that a sentencing sheet was executed on Indictment 90-GS-47-5001 on June 4, 1990.

On August 9, 1990, the parties appeared before Judge Cottingham and the State presented evidence from witnesses intended to address its assertion that Carpenter had breached the plea agreement. Carpenter's counsel objected to the court's authority to reconvene the matter. The trial judge said the purpose of the hearing was to determine whether to "enhance" Carpenter's sentence on Indictment 90-GS-47-5001. He also characterized the hearing as one to determine whether Carpenter should be held in "contempt" for violating the plea agreement. After taking testimony, the trial judge sentenced Carpenter to 25 years consecutive on Indictment 90-GS-47-5001. The sentencing sheet for Indictment 90-GS-47-5001 was executed on August 9, 1990.

In his complaint for declaratory relief and Petition, Carpenter asserts that the trial judge

² The sentence was to run concurrently with a then-existing sentence in North Carolina.

lacked authority to reconvene the hearing after the expiration of the term of court at which the June 4, 1990 proceedings occurred. Because the trial judge lacked authority to conduct those proceeding, Carpenter asserted that the second 25-year consecutive sentence is an illegal sentence and he is being unlawfully detained by SCDC.

#3
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Carpenter also asserts multiple violations of his rights by SCDC during his term of imprisonment, based both on SCDC making a change to his sentence after he had served twenty (20) years of his sentence³, and also on the ground of equal protection, asserting that his earned education and work credits were removed from his record and he was not given credit toward his sentence various credits. He asserts that another defendant sentenced under the same indictment as he, with the same sentence, was given credits for good time, education, and work, and was released from the Department's custody in 2001.

In their motions to dismiss, SCDC and the AG assert various bases which they assert deprive this Court of jurisdiction to hear the merits of Carpenter's case. They assert the issue must be raised internally as an inmate grievance pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 750 (2000). They also assert that Carpenter is required to raise this issue through post-conviction relief (PCR), and that any habeas corpus relief must be sought in the original jurisdiction of the Supreme Court.

In denying the motions to dismiss, the Court makes the following conclusions of law:

The Court agrees that the Al-Shabazz process exists to challenge internal SCDC matters, such as disputes about sentencing credits, in most circumstances. However, that process does not preclude the common law writ of habeas corpus, which remains within the jurisdiction of the

³ Carpenter's argument is related to the decision of the South Carolina Supreme Court in Tant v. South Carolina Department of Corrections, 408 S.C. 334, 759 S.E.2d 298 (2014).

circuit court pursuant to South Carolina Constitution Article 5, Section 20. In Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158, 160 (2006), the Supreme Court affirmed a lower court ruling that a case involving a claim that a sentence had expired was not required to be heard by the ALC under Al-Shabazz. Moreover, none of Carpenter's prior filings raised the issue now before the Court, *i.e.*, whether Carpenter's term of incarceration has expired such that he is being illegally held, and that issue is not required to be determined internally by SCDC procedure.

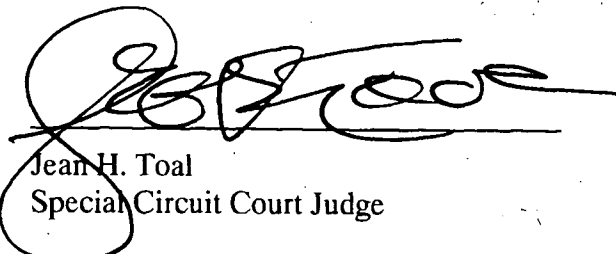
As to PCR relief, that statutory procedure exists for purposes of challenging constitution violations related to the criminal conviction, and is not the exclusive method for challenging an unlawful sentence. *See e.g.* Williams v. Ozmint 380 S.C. 473, 671 S.E.2d 600 (2008). Declaratory relief is available "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 of a disturbance of the relationships." Thompson v. State of South Carolina, Op. No. 27610 (S.C. Sup. Ct. filed Mar. 2, 2017) (Davis Adv. Sh. No. 9 at 25). Carpenter alleges he is entitled to immediate relief because his detention is illegal.

It is those allegations, and the factual predicate established by the record, that make this action appropriate for consideration on habeas corpus. "The great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." Walker v. Wainwright, 390 U.S. 335, 88 S.Ct. 962, 19 L.Ed.2d 1215 (1968). The writ is appropriate under circumstances "where there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler v. State of South Carolina, 302 S.C. 466, 397 S.E.2d 87 (1990), citing State v. Miller, 16 N.J. Super. 251, 84A2d, 459 (1951).

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The file reflects that in 1993⁴, Carpenter filed a petition for writ of habeas corpus with the circuit court, and when it was denied, an appeal was taken to the South Carolina Supreme Court. In denying the relief Carpenter then sought, the Supreme Court held that the writ of habeas corpus “entitles an incarcerated prisoner to be released from confinement and is not available where a decision in the prisoner’s favor would leave him incarcerated⁵.” The current petition does, in fact, allege that Carpenter is being illegally held, both based on errors committed at the time of sentencing, and because of changes by SCDC to his max-out date, as evidenced by the exhibits attached to the petition. Twenty-four years later, Carpenter now brings a different question before the Court seeking a writ of habeas corpus. This Court has jurisdiction and authority to consider this petition on the merits.

For the reasons set forth above, the motions to dismiss are denied. Defendants have 15 days from the date of the hearing (April 6, 2017) to file their answers to the complaint and petition and a merits hearing shall be scheduled immediately thereafter.

IT IS SO ORDERED.


Jean H. Toal
Special Circuit Court Judge

April 14, 2017

⁴ Exhibit 1 to Carpenter’s Memorandum in Opposition to SCDC’s Motion to Dismiss dated February 17, 2017. The proceeding was an appeal from a petition of writ of habeas corpus filed in the circuit court of Marlboro County.

⁵ Carpenter’s 1993 petition asserted that his sentence should be credited for the pre-trial period that he was incarcerated before his plea. The file reflects that SCDC later credited this time against Carpenter’s sentence.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

Case No. 2016-CP-40-6916

Appellate Case No. 2017-002577

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Charles Eugene Carpenter.....Appellant;

vs.

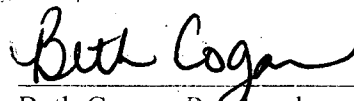
South Carolina Department of Corrections and
The State of South Carolina..... Respondents.

PROOF OF SERVICE

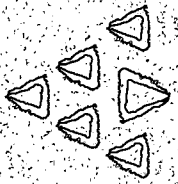
I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on January 8, 2018, I served a copy of the **Memorandum in Response to Rule 203(d)(1)(b)(vi), SCAR Inquiry**, in the above-captioned case on the following individuals by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Clay Mitchell, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

Damon Wlodarczyk, Esquire
Riley Pope & Laney, LLC
Post Office Box 11412
Columbia, South Carolina 29211


Beth Cogan, Paralegal

January 8, 2018



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

January 8, 2018

Via U.S. Mail

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JAN 09 2018
SC Court of Appeals

Re: *Charles Eugene Carpenter v. SC Department of Corrections, et al.*
Appellate Case No.: 2017-002577

Dear Ms. Kitchings:

Enclosed for filing please find Appellant Carpenter's **Memorandum in Response to Rule 205(d)(1)(b)(vi), SCAR Inquiry**, submitted in response to the deficiency notice dated December 27, 2017 in the above-referenced matter. Please clock and return a stamped copy in the self-addressed, stamped envelope enclosed. A copy has been sent to counsel for Respondents.

Thank you for your time in this matter, and if you have any questions, please do not hesitate to contact our office.

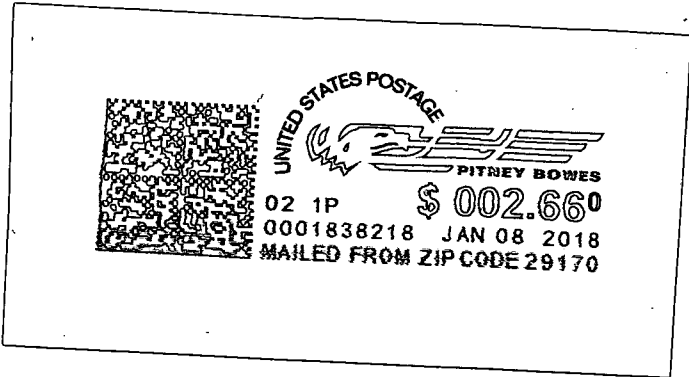
With warm personal regards, I am,

Sincerely yours,

Harvey M. Watson III
harvey@desaballard.com

cc: *Via U.S. Mail and Email*

Danion Włodarczyk, Esquire – counsel for SC Dept. of Corrections
Clay Mitchell, Esquire – counsel for the Attorney General



BALLARD & WATSON, ATTORNEYS AT LAW
226 STATE STREET
WEST COLUMBIA, SC 29169

To:
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JAN 09 2018
SC Court of Appeals

