

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 19 2018

SC Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2015-000210

THE STATE, APPELLANT,

v.

ARTHUR M. FIELD, RESPONDENT.

Unpublished Opinion 2017-UP-455, filed December 6, 2017
Withdrawn, Substituted and Refiled April 4, 2018

Petition for Rehearing #2

On April 4, 2018, this Court issued an opinion in which it affirmed the decision of the circuit court who “agreed with the State’s contentions” that Respondent’s sentence was contrary to law – and sought to remedy such by instead adjusting the sentence of a co-defendant.¹ State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017). Appellant respectfully petitions for rehearing per Rule 221, SCACR because the circuit

¹ Appellant notes that the validity of the modification of co-defendant’s sentence is also pending before this Court in a separate matter State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018) *petition for reh’g filed*.

court cannot adjust the sentence of a co-defendant in an effort to remedy Respondent's sentence that otherwise affords him credit that he is not legally entitled to receive.

As a threshold matter, as this Court affirmed, the circuit court agreed that Respondent improperly received credit for fifteen months on house arrest, when in fact he should have only received time when he was on "monitored" house arrest -- from July 21, 2012 until December 13, 2012, or 145 days. Both monitoring and house arrest must be present, and Respondent simply did not have house arrest after December 13, 2012, despite the fact that he was monitored, then by the plain and unambiguous language of S.C. Code § 24-13-40 he was not legally entitled to credit beyond that date.² Accordingly, Respondent's sentence is contrary to the law. A circuit court lacks discretion to fashion a sentence that is contrary to the law -- for it to hold otherwise is an error of law.

² As explained in the Final Brief of Appellant, it was Respondent who made the motion to reconsider bond, which was heard before Judge Benjamin on December 13, 2012. Respondent's counsel expressly asked that Respondent be taken off of the house arrest *and* the GPS monitoring. (**R. pp. 142 - 143**). Judge Benjamin -- as requested by Respondent -- removed the house arrest component, and did so in writing. (**App. Br. pp. 4 - 5**).

WHEREFORE, because the Order removing House Arrest was done so in writing, Appellant requests this Court grant the Petition for Rehearing and rehear the case.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

BRIAN T. PETRANO
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By: 

ATTORNEYS FOR THE APPELLANT

Columbia, South Carolina

April 19, 2018.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000210

THE STATE,

Appellant,

vs.

ARTHUR M. FIELD,

Respondent.

PROOF OF SERVICE

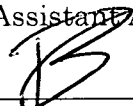
I certify that I have served the *Petition for Rehearing #2* by depositing a copy in the United States Mail; postage prepaid, on April 19, 2018, addressed to his attorney of record:

Mr. James Todd Rutherford
The Rutherford Law Firm, LLC
PO Box 1452
Columbia, SC 29202-1452

April 19, 2018.

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STATE OF SOUTH CAROLINA



ALAN WILSON
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April 19, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Columbia, South Carolina 29211

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RE: State v. ARTHUR M. FIELD,
Appellate Case No. 2015-000210

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Original plus six (6) copies of the *Petition for Rehearing #2*.
- (2) Proof of Service of the above items to Respondent's attorney of record.

Sincerely,

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cc: Mr. James Todd Rutherford
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