

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM PICKENS COUNTY

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S.C. SUPREME COURT

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

Case No. 2018-001042

THE STATE..... PETITIONER,

v.

ARTHUR M. FIELD.....RESPONDENT

Unpublished Opinion 2017-UP-455

Rehearing Denied 5/7/2018

RETURN TO STATE'S PETITION FOR *CERTIORARI* TO THE COURT OF APPEALS
OBJECTION THERETO AND REQUEST FOR DISMISSAL OF APPEAL

Alan Wilson
Attorney General

S. Creighton Waters
Senior Assistant Deputy Attorney General

Brian S. Petrano
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR PETITIONER

J. Todd Rutherford
P.O. Box 1452
Columbia, SC 29202
(803) 256-3003

Todd@TheRutherfordLawFirm.com

ATTORNEY FOR RESPONDENT

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RETURN AND OBJECTION

Respondent Arthur M. Field, by and through his attorney J. Todd Rutherford, objects to the State of South Carolina's petition for *Writ of Certiorari* to review the unanimous opinion of the South Carolina Appellate Court in State v. Field, Unpub. Opinion No. 2017-UP-455. Respondent respectfully requests that the Petition and Writ be denied for the reasons set forth in the Appellate Court's analysis and conclusion, the *Record on Appeal*, Respondent's Briefs, and those further explained herein. This is not a novel question of law, but an issue of fact. The Court of Appeals correctly decided this matter and implicitly held the issue did not involve the application or statutory construction of S.C.C. Ann. §24-13-40 (2013 & 2017 Supp.).

SUMMARY OF ARGUMENT

No issue exists that justifies the significant relief of a *Writ of Certiorari*. The trial court committed no harmful error of law during sentencing or upon reconsideration. Field served fifteen months of house arrest with GPS monitoring, and the State presented no evidence to contradict this at sentencing. The State affirmatively waived its right to appeal the issues it now raises. The Motion for Reconsideration only raised the issue of good time credits as applied by the Department of Corrections, hence no other issue was sufficiently preserved for appeal. As held by the Court of Appeals, the lower court acted reasonably and within its sole discretion in adjusting Field's sentence, based upon the uncontroverted facts presented. The appeal, petitions for rehearing, and this petition violate the express and implied terms of the contractual Plea Agreement and Field's constitutional rights, as held by the Fourth Circuit, deprive this Court of jurisdiction, and should be dismissed. All other objections are preserved. The decision of the Appellate Court should be affirmed and this petition denied in the interests of justice and preservation of judicial resources.

RESPONDENT'S FACTS AND ARGUMENT

A. The Sentencing Was Based on Facts and Was Within the Court's Discretion.

i. The original sentence was reasonable and within the court's discretion.

Field was indicted on June 12, 2012, 2012-GS-47-8. He was incarcerated and held without bail for 5 days in solitary confinement. The court set bond at two million dollars, despite Field being a non-violent offender with no criminal record and no flight risk.

Field was incarcerated for 33 days. A hearing to reconsider the bail was held before State Grand Jury Presiding Judge Benjamin, who reduced the bail to \$500,000 and placed Field on House Arrest with GPS Monitoring and other conditions. In December 2012, Judge Benjamin relaxed the restrictions to permit Field to pursue his occupation, visit the doctor, work with State Investigators under his proffer agreement, meet with his attorneys, and attend religious services. Judge Benjamin left Field under GPS monitoring, and made clear the house arrest was only 'relaxed'.¹ Although the uncontroverted evidence wholly supported Judge Maddox's initial factual finding Field spent 15 months on GPS Monitoring and was effectively confined to his premises, the lower court's ultimate decision on reconsideration and the Court of Appeals' April 2018 decision were not based upon the issues of house arrest or statutory construction and not relevant herein, and the State's petition based solely thereon should be rejected.²

¹ Judge Benjamin stated, "so he can go" referring to allowing Field to work at DJ events. *Appendix* ("App."), p.146-147, ll.15-16. Condition #14 was subsequently added to the bail Order referring to the relaxed 'home confinement'. It bears different initials than the first 13 and may have been added in December, 2012. *App.*, p.153. Seven (7) different dates appear on the same Order with numerous signatures, initials and notations of various judges, clerks and others. The State confirmed this in its Motion to Reconsider, see p.8 below, and the court proceeded based on the State's representation. Either the initial determination, or the reconsideration, should be affirmed.

² See Sec. C, concerning initial award of credits correctly made based on facts.

The State knowingly induced Field to enter into its binding, contractual Plea Agreement on April 12, 2013, re-executed on May 6, 2013 barring any appeals by any party (see Sec. B). Field performed in direct and detrimental reliance on the State's representations. Field appeared before Judge Maddox and entered a plea on May 6, 2013. Sentencing was deferred by the State until October 2013.

The lower court, within its sole and exclusive discretion, determined Field's original sentence based on uncontroverted facts,³ including: Field's 454 hours of cooperation⁴; his jail time and solitary confinement without bond;⁵ the uncontested confirmation of his adherence to the 15 month confinement prior to sentencing;⁶ the Plea Agreement; and the hope of recovering the large restitution the State demanded.⁷ The Court credited 33 days and 15 months **with no objection** from the State as to the Court's factual findings or the law. The State had all prior rulings of Judge Benjamin and failed to bring any complaints to the court's attention at the May 6, 2013 plea, or the October 8, 2013 sentencing.⁸ State v. Carlson, 363 S.C. 586,595, 611 S.E.2d 283,287(Ct.App. 2005)("A party may not complain on appeal of an error his own conduct has induced."); Erickson v. Jones St. Publishers, LLC, 368 S.C. 444,476(2006)(same).

³ Appellate Courts do not re-evaluate facts if the trial court's ruling is supported by any evidence. State v. Wilson, 345 S.C.1,6, 545 S.E.2d 827,829(2001).

⁴ *App.*, p.310, ll.5-6, ll.18-19. Confirmed by the State and acknowledged by the Court: *App.*, p. 242, l.21-p.243, l.15; p.247,l.8-p.248, l.2 "it was a lot"; *R.*, p.250,l.11-p.251, l.8; p.262, l.8-p.263, l.10. Pfeiffer pled guilty as a direct result of Field's extensive cooperation and the State (A.A.G. Petrano) thanked Field for his help in an email.

⁵ *App.*, p.251, l.22-p.252, l.11.

⁶ *App.*, p.252, l.19-p.253, l.1; p. 261, l.21-p.262, l.7; p.266, ll.2-4; pp. 309, l.23-310, l.4; p.315, ll.3-8; and see Sec. C.

⁷ *App.*, p.267, ll.8-12.

⁸ *App.*, pp.155-183.; *App.*, p. 135, *et al.*, *App.*, pp.237-273. A.D.A.G. Waters announced to the press he and the State were very happy with the sentence, including the credits awarded by Judge Maddox. *App.*, p. 352.

Field reported to the Detention Center as ordered. On October 16, 2013, the Director of the Department of Corrections (“D.O.C.”) determined Field’s credits and good behavior were sufficient to merit release as mandated by S.C.C.Ann. §24-13-210 and S.C.C.Ann. §24-13-220 (2014 & 2017 Supp.). This determination was solely within the purview of the D.O.C. Director, and was not timely or properly contested by the State. For these reasons, this petition must be denied.

- ii. The Motion to Reconsider did not raise any issue relating to the original sentence or the award of credits, or any question of law concerning Judge Maddox’s action. These issues were not adequately preserved for appeal.

The State moved to reconsider the sentence, but only after it learned of Field’s release. It did not raise any facts or law, previously unavailable.⁹ The only objection in the State’s Motion was to the ‘good time credits’ awarded by the D.O.C.¹⁰ The State’s Motion referred to, and admitted, Judge Benjamin only *modified* house arrest to permit Field to leave the home to DJ parties or other events (quoting from the State’s Motion):

Finally, Dec.13, 2012, Judge Benjamin again amended the bond to allow him [Field] to travel out of state to go to parties or events where he was the DJ. Thus, the time on house arrest was a benefit to Field...Of course, pursuant to the plea agreement any sentence is in the discretion of the court, so the State has simply filed this motion...in case the sentencing *result* is inconsistent with the court’s intent.¹¹

⁹ In the absence of new information previously unavailable, or argument which could not have been presented, a Motion to Reconsider under SCRCrimP 29 is not appropriate. E.g. Mayfield v. Nat’l Assn. for Stock, 674 F.3d 369(4th Cir. 2012)(reconsideration denied: lack of any evidence or argument that could not have been raised at initial hearing). Similarly, Lanier v. Lanier, 364 S.C. 211,217, 612 S.E.2d 456,459 (Ct.App. 2005). The State is not allowed to ‘do over’ what it thought it had done correctly. E.g., State v. Higgenbottom, 344 S.C.11, 542 S.E.2d 718 (2001). Nor did the State’s motion present any new, previously unavailable evidence contradicting Field’s effective GPS monitored house arrest.

¹⁰ *App.*, p.135.

¹¹ *App.*, p.289. Emphasis added. Admitting this is an issue of *result* and sentencing goals.

The issues of statutory construction or legal definitions were not raised in the Motion. Nor was there objection in the State's Motion to the actual amount of credits awarded, or to any error of law. Thus, these issues were not adequately preserved for appeal and were again waived by the State. State v. Dunbar, 356 S.C. 138,142, 587 S.E.2d 691,693 (2003); Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011) (reh. den.).

At the Reconsideration hearing, 9 months after Field's release, the State reaffirmed that the purpose of its Motion was to contest the award of the 'good time credits' by the D.O.C., and not the statutory 'time served' credits awarded by the court.¹² The State argued it was the *application* of the credits by the D.O.C. at issue, "because of the calculation of the good time."¹³ The State claimed it was "purely" an issue of fact.¹⁴ Mr. Waters argued, "All I am doing is saying these are the facts and there was a [factual] error in the amount of [good time] credit he was given."¹⁵ To this, the Court replied, "If there's a mistake—a factual mistake—then the Department of Corrections, who made the decision, has got to calculate it."¹⁶

- iii. The lower court adjusted the sentence at reconsideration based upon the facts available to it. Such adjustment was within its sound discretion.

Judge Maddox stated he had over 9 months to reflect upon all of the facts following sentencing and he would confirm the result, as his sentencing goals had been achieved.¹⁷ He continued, "the Department of Corrections is going to give him what he's going to get. So I am

¹² *App.*, p.299, l.24-p.300, l.11. The undersigned immediately and strenuously objected to the Motion based on the Plea Agreement and Rule 59. *App.*, p.300, ll.14-24; p.302, ll.17-22.

¹³ *App.*, p. 303, ll.11—18; p.307, ll.1-5.

¹⁴ *App.*, p.315, l.25.

¹⁵ *App.*, p.316, ll.1-3.

¹⁶ *App.*, p.316, ll. 17-20.

¹⁷ *App.*, p.297, ll.4-6; p.310, l.22-p.311,l.1.

going to leave that ...the same.”¹⁸ Judge Maddox wanted Field to stay out of prison to pay restitution, stating, “Ultimately what I want to come out of here is an Order that is clear and requires Mr. Fields (sic) to pay money, or he’s going to prison.”¹⁹ At the time, the State agreed with that holding.²⁰ The Court stated that the outcome was “to remain where it is.”²¹

As held by the Court of Appeals, this accepted or adjusted Field’s sentence, and was within the Court’s sole and exclusive discretion. The denial of the Motion for Reconsideration and resulting sentence adjustment were not so ‘clearly erroneous as to offend substantial justice’ and should be affirmed. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105(2000); State v. Parker, 381 S.C. 68, 671 S.E.2d 619(Ct.App. 2008) (See, Sec. D).²²

Judge Maddox re-affirmed his discretionary determination, and denied the State’s attempt to put Field in violation of probation in July, 2014.²³ He again held restitution was his primary sentencing objective, confirming the sentence adjustment.²⁴ This was a pragmatic determination

¹⁸ *App.*, p.313, ll.22-25; p.314, l.1. Judge Maddox’s 2015 Order denying reconsideration refers to the calculation of good time credits by the D.O.C. *App.*, p.328.

¹⁹ *App.*, p. 322, ll.21-24. *App.*, p.266 “I have given you credit for 33 days and 15 months.”

²⁰ *App.*, p.322, l.25. Field ultimately paid over \$1.3 Million restitution relying on such holding.

²¹ *R.*, p.324, ll.9-10.

²² Even, *arguendo*, if an error were made by the court at some point, the resulting sentence in defendant Field’s favor was not so substantial an error as to “affect the fairness, integrity or public relations of judicial proceedings” nor “shock the conscience.” It would be upheld. The converse is not true. Any increase in active sentence resulting from an error would be reversible requiring automatic reduction for defendant. Rosales-Mireles v. U.S., 585 U.S. ---, (6/18/2018).

²³ One week prior to the scheduled hearing, the Attorney General caused the Department of Pardon, Probation and Parole to issue Field a citation of violation for non-payment of the restitution Order of October 8, 2013, which Order the court also modified in July, 2014 and which the State omitted from the *Record*, including the affirmation of the sentence adjustment. The objection to timing is preserved—the Grand Jury Clerk was able to issue this new Order immediately.

²⁴ *App.*, p.354.

made in cognizance of all facts, not a ‘harmful error’ or a ‘gross abuse of discretion’. State v. Hicks, 377 S.C. 494,498, 280 S.E.2d 200, 202 (1981).²⁵

The trial court will not be reversed when there is evidence to support sentencing determinations or adjustments to achieve its objectives. State v. Allen, 370 S.C. 88,94, 634 S.E.2d 653,655(2006); 24 C.J.S. Criminal Law §204. There is strong public policy against interfering with a court’s discretion and appellate courts give great deference to the trial court’s determinations and full deference to its factual findings. E.g., State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct.App. 2001)(sentence reduction aff’d); State v. Bryant, 372 S.C. 305,312, 642 S.E.2d 582,586(2007). The petition for certiorari should be denied or dismissed as unfounded.

B . This Appeal Must Be Dismissed. It Is Unconstitutional And Violates The Express And Implied Terms Of The Plea Agreement.

Under the terms of the State’s contractual Plea Agreement, Field waived essentially all fundamental state and federal Constitutional substantive and procedural due process rights. This included any direct or indirect appeal, collateral attack, habeas corpus, post-conviction relief and those rights guaranteed under the U.S. Constitution and the South Carolina Constitution, and relevant state or federal statute. The Plea Agreement emphatically confirms it is final and complete as to both the State and Field: “It is the intent of the parties that this agreement and the resulting pleas and sentences finally conclude any and all *existing or possible* legal proceedings related to indictment 12-GS-47-008 whether direct or collateral...”²⁶

²⁵ At the November 1, 2017 hearing, Judge Maddox acknowledged the goals had been achieved as to Field, who had completed over 4 years of probation, paid all fines and supervision fees, and timely paid substantial restitution. Field hopes to complete 5 years probation in October, 2018 without blemish in direct reliance on the Plea and the adjusted sentence.

²⁶ .*App.* pp.184-186; ¶¶ 5—7, emphasis added. And, p.158, ll. 12-14; p. 164, l.6—p.165, l.2; p.18.

The State did not reserve to itself any right to appeal in any manner or about any issue of fact or law, and thus deprived the appellate courts of jurisdiction. The State's 2013 improper motion for reconsideration, later 2015 appeal, subsequent petitions for rehearing, and this petition, all violate and breach the express and implied terms of the Plea Agreement ¶7, which precludes any appeal for any reason. U.S. v. Guevara, 941 F.2d 1299 (4th Cir. 1991)(rehearing *en banc* den. 11/14/91), *cert.den.* 503 U.S. 977(1992), affirmed in U.S. v. Zuk, 874 F.3d 398(4th Cir. 2017).²⁷ Field raised this objection at every step.²⁸

South Carolina has not ruled on this issue as to plea bargains. In the absence of such a ruling, the Fourth Circuit Court of Appeals' holding controls, see State v. Thrift, 312 S.C. 282,295, 440 S.E.2d 341(1994).²⁹ Field is entitled to the full benefit of the bargain to protect his contractual, fundamental constitutional and due process rights. *Id.*, 312 S.C. at 293. The State explicitly waived

²⁷ In Guevara, *supra*, the Fourth Circuit held "a plea agreement provision that bars the defendant from appealing, but is silent as to the government's right to appeal, must be construed as imposing a reciprocal limitation on the Government's right to challenge a judgment or sentence imposed by the...court." *Id.* at 1299. The Fourth Circuit quoted Guevara, *supra*, with approval in U.S. v. Blick, 408 F.3d 162, n.5(4th Cir. 2005)("when a defendant waives the right to appeal in a plea agreement, 'such a provision against appeals must also be enforced against the government.'") This is a fundamental, constitutional right intended to protect Field and place the burden directly on the state if it wished to preserve its own right to appeal. It must expressly do so, even if the lower court has committed a fundamental error. Guevara *supra*, at 1300; also U.S. v. Bowe, 257 F.3d 336,342(4th Cir. 2001). Field relied on this when induced to enter the Agreement.

²⁸ E.g., *App.*, p.309, ll.20-25; pp. 358-361.

²⁹ "Regarding plea bargains in general and the law applicable to them, this State and its courts have generally followed federal Fourth Circuit precedent." Thrift, 312 S.C. at 292, 440 S.E.2d at 347(1994) discussing Santobello v. N.Y., 404 U.S.257(1971) and U.S. v. Ringling, 988 F.2d 504(4th Cir. 1993). If these appeals are not violations of the Plea Agreement, then Field reserves the right, if needed, to contest the Plea and/or conviction and/or sentence and/or restitution and/or 5 years served probation, as jointly or severally unconstitutional under S.C.C.Ann. §§17-27-10—160(2014 & Supp. 2017). Brown v. State, Op. #27796 Shearhouse Adv. Sheet #19 at 11 (S.C. filed 5/9/2018). The undersigned respectfully asserts at all times the State improperly seeks to expand the sentence in direct violation of the Plea Agreement it drafted.

the right to contest the sentence and waived its right to appeal in the Plea Agreement as a matter of law. State v. Rhinehart, 312 S.C.36,39, 430 S.E.2d 536,537-538(Ct.App. 1993). Any imprecision or ambiguity in the Plea Agreement must be construed against the State. Thrift, supra, 312 S.C. at 347 citing Ringling, supra, 988 F.2d 504(4th Cir. 1993). Plea Agreement analysis must be more stringent than a commercial contract, because the rights involved are fundamental and constitutionally based. The State is held to a higher degree of responsibility than the defendant for imprecisions or ambiguities. Ringling, Id.; Thrift, supra. The State may not withdraw from the plea arrangement or do any act in derogation of its contract. Custodio v. State, 373 S.C. 4, 644 S.E.2d 36(2007)(specific enforcement mandated). The State is legally obligated to fulfill promises made to defendants who are induced to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444(Ct.App. 2007). The government is required to meet the most meticulous standards of both promise and performance. U.S. v. Gonczy, 357 F.3d 50, 53 (1st Cir. 2004). The defendant is entitled to receive every benefit of the bargain and every advantage, having waived significant constitutional rights. U.S. v. McQueen, 1088 F.3d 64, 66 (4th Cir. 1996). Any imprecisions or ambiguities are to be resolved in the defendant's favor. U.S. v. Wood, 378 F.3d 342, 348 (4th Cir. 2004); U.S. v. Peglera, 33 F3d 412, 414 (4th Cir. 1994). The appeal should be dismissed, as continually asserted by the undersigned counsel in pleadings before the Court of Appeals. As a threshold issue, it is asserted by the undersigned that this Court has been deprived of jurisdiction.

C. No Harmful Error of Law Was Made by Judge Maddox. The Uncontroverted Factual Evidence Supported the Award of Credits to Fulfill the Intent of the Legislature.

S.C.C. Ann. §24-13-40, amended, permits the sentencing judge, in his sole discretion, to award credits against the sentence for “any time spent” on GPS Monitoring house arrest. The statute does not define the requirements of the ‘house arrest’ or whether such arrest must be ordered by a court or is a resulting house arrest. However, this was not an issue of law before the lower court. Judge

Maddox was aware of the statute and made a factual determination, uncontroverted by the State. “Any time spent” is intentionally vague, as the Legislature left sentencing to the court’s sole discretion to determine what constituted such credits. “GPS monitoring or house arrest” was also not defined in the statute. The Legislature intended the court to make such determinations based upon the facts before it. Judge Maddox did so, thus no harmful error of law was made.³⁰

The uncontroverted factual evidence supports that Field spent roughly 14 hours a day at home plugged into a recharging device to maintain the charge on the ankle GPS monitoring device. The bail bondsman affirmed he visited Field on numerous occasions to verify Field’s confinement and the effectiveness of the GPS device. The device triggered an alarm whenever the battery began to ‘run down’ daily, and if Field left a certain narrow radius of the house.

Bail bondsman Fowler repeatedly confirmed Field’s confinement to the Court. The Court requested for the bondsman to, “Continue to monitor him under the same conditions as he had before,” which Fowler affirmed. The Court and Fowler then agreed that Field would be “basically under house arrest.” *App.*, p.147; p.269, ll.12-18. The State presented no evidence contradicting such actual home confinement. *App.*, p.181; pp. 268-269; p.272, l.2.

GPS monitoring implies house arrest, e.g. Com. v. Chiappini, 782 A.2d 428,490(PA 2001). This question is one of fact, not of law, and the decision of the active sentence is best left to the

³⁰ The undersigned sponsor of Bill H3193 attests the intent of the Legislature was to award such credits for all time spent on GPS monitoring, overruling State v. Higgins, 357 S.C. 382, 593 S.E.2d 180(Ct.App. 2004). Judge Maddox acted within the Legislature’s intent and the statute. The U.S. Supreme Court defines ‘in custody’ as sufficient the person be under the jurisdiction of a court and subject to any restraint of liberty not shared by the public generally, even though permitted to leave home to go to work, Jones v. Cunningham, 371 U.S. 236,242(1963); Hensley v. Mun. Court, 411 U.S. 345 (1971). The South Carolina defense bar opines “South Carolina law §23-13-40 states that time spent, prior to trial and sentencing, under electronic monitoring or house arrest...” is credited. (Strom, *House Arrest*, 2018). This is NOT an issue of law.

lower court's discretion, a result it has confirmed on 3 separate occasions over 4 years.³¹ Although not part of the holding of 2017-UP-455, this corroborates the validity of the credits initially awarded. This was not the basis for the lower court's reconsideration decision or the decision of the Court of Appeals and is a red herring the State has again tried to raise. It should be rejected, and this petition denied.

D. The Court of Appeals Correctly Denied the Appeal and Petitions for Rehearing.

The State appealed in February 2015 and the Court of Appeals ruled in Field's favor in December 2017. The State brought its claim concerning the factual issue of Judge Benjamin's Order from December 2012 and the construction of S.C.C. Ann. §24-13-40, as amended, to the Appellate Court's attention in its first petition for rehearing, which was denied.³² The Court of Appeals withdrew its original opinion and substituted the current decision taking into account the State's contention, thereby making such issue moot.

As the Court of Appeals held: When the lower court adjusted both sentences, it acted within its sole and exclusive discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200 (1981).³³ "We

³¹ Any ambiguity in Judge Benjamin's or Judge Maddox's Orders, or in the construction or application of S.C.C. Ann. §24-13-40, as amended (2013 & 2017 Supp.) must be resolved in Field's favor and construed strictly against the State. State v. Blackmon, 304 S.C. 270,273, 403 S.E.2d 660,662 (1991). Pre-sentence credits are to be applied liberally in defendant's favor. People v. Keating, 185 Cal.App.4th 364, 110 Cal.Rptr.3d 754(App.2 2010)(amendment to be given liberal treatment). Any doubt, factual or legal dispute, must be resolved in Field's favor, and any others' who may have been granted credits for similar GPS monitoring. Williams v. State, 306 S.C. 89,91, 410 S.E.2d 563,564(1991). Otherwise, every similar sentence since or plea agreement will have to be re-examined at great expenditure of judicial resources.

³² Respondent filed Returns to Appeal and Petition incorporated here to preserve all matters.

³³ In re M.B.H., 387 S.C. 323,326, 692 S.E.2d 541(2010); U.S. v. Helton, 782 F.3d 148,154(4th Cir. 2015); U.S. v. Pauley, 511 F.3d 468,473(4th Cir. 2007)(denying State's attempt to increase sentence); State v. Wilson, 386 S.C. 503,509, 690 S.E.2d 62,65(2010); Brooks v. State, 325 S.C. 269, 481 S.E.2d 712(1997); U.S. v. Ventura, 864 F.3d 301,308(4th Cir. 2017). Field does not

hold the circuit court, in adjusting the sentence it imposed ...so that the active sentences ... were similar, acted within its discretion.” Field, *supra*, at p.2 (4/4/18). The Court noted Judge Maddox had considered the State’s argument, but determined it prudent to adopt the changes after careful consideration over many months. The 2014 denial of reconsideration by Judge Maddox was correctly affirmed. The April 2018 holding of the Court of Appeals is not based upon a ruling of law or the construction of S.C.C. Ann. §24-13-40, or S.C.C. Ann. §24-13-210(A), *et seq.*. It is a narrow ruling confined to the court’s authority to adjust a sentence. Smith, *supra*.

The State raised virtually identical arguments in its second petition for Rehearing. This was denied by the Court of Appeals, which concisely declared it had not overlooked or disregarded any new fact or principle of law not previously considered. Harleysville Group Ins. v. Heritage Communities, Inc., 803 S.E.2d 288 (2017)(rehearing den. 7/26/17 Beatty, C.J.).

The State now improperly seeks to divert this Court into the factual matters of the computation of the original credits or the construction of the statute. It failed to timely object to all such matters. It failed to raise any evidence concerning Judge Benjamin's Order or disputing the evidence of 15 months of effective GPS monitored house arrest, as determined by Judge Maddox. There was no harmful error of law below. Those factual issues are not properly before this Court, whose review should be confined to the substituted opinion of the Court of Appeals, which circumvented such issue entirely by correctly affirming the trial court’s right to achieve sentencing goals suitable to the nature of the crimes and defendant before it. This Court does not

concede or admit any fact or other matter, except for the purposes of argument herein. Any result as to Pfeiffer is independent of the arguments raised here.

sit to correct factual errors. The Court of Appeals' decision should stand and this petition should be denied.

All other issues Respondent asserted at any time are preserved.

CONCLUSION

The unanimous decision of the Court of Appeals was correct and should be affirmed. No reason exists to grant a fifth review of this matter. SCACR 242(b). No significant issue or novel question of law exists to justify the extraordinary relief of a *Writ of Certiorari* to the Court of Appeals, nor is there reason to interfere with the trial court's sentencing goals and prerogatives supported by the uncontroverted facts. The Plea Agreement, Fourth Circuit case law, and the failure of the State to preserve the issues it raises here for appeal, all deprive this Court of jurisdiction. The State's breach of the Plea Agreement calls into question its good faith and the validity of every other Plea Agreement it has negotiated. No issues of fact or law were overlooked by the Court of Appeals in its four comprehensive reviews of the matter, as set forth in its substituted opinion from April 2018, which should be affirmed and this petition denied.

WHEREFORE, it is respectfully requested the Petition for *Writ of Certiorari* to the Court of Appeals be denied or dismissed as constitutionally or contractually improper.

J. TODD RUTHERFORD
The Rutherford Law Firm
Columbia, SC 29202
(803) 256-3003


J. Todd Rutherford
Attorney for Respondent

July 9th, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY

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

RECEIVED

JUL 12 2018

S.C. SUPREME COURT

Case No. 2018-001042

THE STATE..... PETITIONER,

v.

ARTHUR M. FIELD.....RESPONDENT

Certificate of Service

I certify that I have served the *Return to the State's Petition for Certiorari* by depositing three copies in the United States Mail, postage prepaid, on July 9, 2018, addressed to each of the State's attorneys of record:

Alan Wilson
Attorney General

S. Creighton Waters
Senior Assistant Deputy Attorney General

Brian S. Petrano
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211



J. Todd Rutherford
South Carolina Bar Number 12097
2113 Park Street
Columbia, South Carolina 29202
(803) 256-3003 Telephone
trutherford@sc.rr.com
Attorney for Respondent

July 9, 2018

THE RUTHERFORD LAW FIRM, LLC
2113 PARK STREET
P.O. Box 1452
COLUMBIA, SC 29202



Supreme Court of South Carolina
ATTN: Clerk of Court
P.O. Box 11330
Columbia, SC 29211