THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Robert E. Hood, Circuit Court Judge
Trial Court Case No.: 2016-CP-40-6916

Appellate Case No.: 2017-002577

Charles Eugene Carpenter,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF ISSUES ON APPEAL

I. THE TRIAL COURT CORRECTLY FOUND SCDC WAS NOT A PROPER PARTY TO THE PETITION FOR WRIT OF HABEAS CORPUS

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED

III. THE TRIAL COURT CORRECTLY CONCLUDED THAT NO EQUAL PROTECTION VIOLATION OCCURRED

IV. CARPENTER'S CLAIM OF JUDICIAL IMPROPRIETY

STATEMENT OF THE CASE

On November 18, 2016, Carpenter filed a civil action (Case No. 2016-CP-40-06916) in the Court of Common Pleas for Richland County titled Complaint and Petition for Writ of Habeas Corpus ("Complaint"). The Complaint presented a claim for declaratory judgment and a Petition for Writ of Habeas Corpus. The sole Defendant in the Complaint was the South Carolina Department of Corrections ("SCDC"). (R. p. 51). Contemporaneously with the filing of the Complaint, Carpenter filed a Motion for Writ of Habeas Corpus (R. p. 44).

On December 28, 2016, SCDC filed and timely served a pre-Answer Motion to Dismiss alleging lack of subject matter jurisdiction, improper venue, failure to state a claim, and failure to join an indispensable party. (R. p. 316).

A hearing was held on SCDC's Motion to Dismiss on February 16, 2017, before the Honorable L. Casey Manning. Judge Manning granted the motion to the extent that he found the State of South Carolina ("the State") should be joined as a necessary party and holding all other matters argued in abeyance pending service of an Amended Summons and Complaint on the Attorney General's Office ("AG") and allowing the time to respond to expire.

The AG accepted service of the Amended Summons and Complaint on behalf of the State on February 21, 2017. The State filed and timely served a Return and Motion to Dismiss on March 31, 2017. (R. p. 327).

On April 6, 2017, a hearing was held on SCDC's Motion to Dismiss and the State's Motion to Dismiss before the Honorable Jean H. Toal, Special Circuit Judge. Judge Toal denied both motions in an Order filed April 25, 2017. (R. p. 7).

On May 10, 2017, SCDC served and mailed for filing its Answer and a Motion to Bifurcate. (R. pp. 350-355). On May 12, 2017, Carpenter filed a Motion for Entry of Default against SCDC and the State. (R. p. 384). On May 15, 2017, SCDC filed a Motion to Deny Entry of Default. (R. p. 386).

On May 18, 2017, the case was set to be heard by the Honorable Jocelyn Newman. However, the case was scheduled as a motion hearing and placed on a roster with a number of other motions to be heard. As a result, Judge Newman continued the case and instructed the parties to request a status conference to schedule a bench trial and hearing on the outstanding motions.

A bench trial was convened on June 7, 2017, before the Honorable Robert E. Hood. Prior to the start of the trial, SCDC withdrew its motion to bifurcate and Judge Hood heard arguments on the Motions for Default, which ultimately were denied by consent of the parties. (R. pp. 15-42). The Motion for Summary Judgment was denied as moot due to the bench trial. [*Id.*].

On October 2, 2017, an Order dated September 12, 2017, was filed granting judgment in favor of SCDC. (R. pp. 15-24). Also on October 2, 2017, an Order dated September 12, 2017 was filed denying the Petition for Writ of Habeas Corpus as to the State. (R. pp. 25-42).

Carpenter filed and timely served a Motion to Reconsider to which both SCDC and the State filed responses in opposition. (R. p. 422; pp. 432-444). On December 18, 2017, an Order was filed denying the Motion to Reconsider. (R. p. 41).

On December 20, 2017, Carpenter filed and timely served a Notice of Appeal in this Court. On that same day, Carpenter also filed a Notice of Petition in the Original Jurisdiction, a Petition for Original Jurisdiction and Writ of Habeas Corpus with a

Complaint, and Petition for Certification of the Appeal to the Supreme Court of South Carolina and Consolidation with Original Jurisdiction Proceedings. (R. p. 445; S.C. Appellate Case Mgmt. System events dated December 27-29, 2017).

On December 28, 2017, the Court of Appeals issued a deficiency letter to Carpenter requiring within ten (10) days a written explanation (including sufficient facts, argument and citation to legal authority) as to why the circuit court erred in concluding that habeas corpus relief was improper as the issues could have been raised in a timely application under the Post-Conviction Relief Act as required by Rule 203(d)(1)(B)(vi), SCACR. (S.C. Appellate Case Mgmt. System event dated December 28, 2017). Carpenter responded on January 8, 2018. (S.C. Appellate Case Mgmt. System event dated January 9, 2018).

On March 12, 2018, after receiving an extension, Carpenter served and mailed for filing his Initial Brief and Designation of Matter to be Included in the Record on Appeal. SCDC hereby submits its Brief.

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND SCDC WAS NOT A PROPER PARTY TO THE PETITION FOR WRIT OF HABEAS CORPUS

Carpenter argues the trial court lacked authority to revisit the argument that the circuit court lacked jurisdiction over the Petition for a Writ of Habeas Corpus. (App. Brief p. 14).

As an initial matter, the argument appears to relate solely to the Order addressing the claims against the State as Carpenter's brief only addresses the "Habeas Order." (*See* App. Brief p. 2, stating "Order Dismissing Petition for Writ of Habeas Corpus" (hereinafter "Habeas Order") versus "Order for Judgment in Favor of the South Carolina

Department of Corrections" (hereinafter "SCDC Order"); App. Brief p. 12-14, referring to Habeas Order only). Therefore, as to jurisdictional rulings set forth in the SCDC Order, Carpenter has abandoned the arguments on appeal. *See* Rule 208(b)(1)(D), SCACR.

Assuming, *arguendo*, the issue has been properly presented, it fails. After ruling on the merits of Carpenter's claims, the trial court concluded that SCDC was not the proper party to a habeas petition and the circuit court was not the proper venue for the relief sought. (R. pp. 23-24).

Carpenter bases his argument on the Order denying SCDC's pre-Answer Motion to Dismiss in which the hearing judge stated in part,

> The current petition does, in fact, allege that Carpenter is being illegally held, both based on errors committed at the time of the sentencing, and because of changes by SCDC to his max-out date, as evidenced by the exhibits to the petition. Twenty-four years later, Carpenter now brings a different question before the Court seeking a writ of habeas corpus. The court has jurisdiction to consider this petition on the merits.

(R. p. 12; App. Brief p. 13).

Carpenter further contends that "the basis for ruling in each circumstance was identical, the purely legal issue of the subject matter jurisdictional limits of the circuit court with respect to habeas petitions." (App. Brief p. 14). However, as discussed below, the trial court had the benefit on considering additional facts not presented in the Complaint or Motion to Dismiss which warranted its conclusion that SCDC was not a proper party to the habeas petition. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (stating a ruling on a 12(b)(6) motion must be based solely upon the allegations set forth on the face of the Complaint).

As set forth in the trial court's Order, the proper procedure for appealing sentence calculations, including sentence credits, is through SCDC's internal grievance procedure. *Al-Shabazz v. State*, 338 S.C. 354, 376, 527 S.E.2d 742, 749 (2000). Once SCDC makes its final decision, the inmate has the right, in certain cases, to appeal the final decision to the State Administrative Law Court ("ALC") and thereafter to the South Carolina Court of Appeals and Supreme Court. *Id.* at 754. The ALC has jurisdiction over all inmate grievance appeals that have been properly filed. *Slezak v. SCDC*, 361 S.C. 327, 605 S.E.2d 506, 507 (2004).

The evidence presented at trial, which was not before Judge Toal at the motion to dismiss hearing, established that Carpenter was previously afforded the opportunity to challenge the claims of lack of due process concerning the "projected max-out date" and sentence credits issues. (R. pp. 20-21; pp. 439-442; pp. 802-806; pp. 964-968)]. Carpenter properly filed his Step 1 grievance and Step 2 appeal through SCDC's internal grievance system as evidenced by the grievances submitted by Defendant SCDC as exhibits at trial. (R. pp. 439-442; p. 803, lines 1-2; pp. 804-806; pp 964-968). Both were answered in full by SCDC and included explanations of the statutes under which he was sentenced and why he was not entitled to work and goodtime credits. (*Id.*). The Step 1 response dated December 9, 2013 stated the warden found "no error in the calculation of [the inmate's] Max-out date" as he was serving mandatory twenty-five (25) year sentences consecutively. (*Id.*). The Step 2 response stated that no part of the sentence could be reduced with credits. (*Id.*). Carpenter was informed of his right to appeal these decisions to the ALC; he failed to do so within the permitted thirty (30) day period (or at anytime based upon the lack of such a filing in the record). While Carpenter was afforded

notice, the right to file a grievance, and an opportunity for judicial review of SCDC's decisions, he chose not to seek such judicial review.

The trial court ruled, in part, habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors for which a criminal defendant had an opportunity to avail himself. *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Therefore, on this conclusion alone, the trial court's Order should be affirmed.

Additionally, the trial court held that a person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application. *Keeler v. Mauney*, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). (R. p. 23, lines 18-20). Unlike the allegations of the Complaint upon which Judge Toal was bound in ruling on the Motion to Dismiss, there was no evidence at trial showing Carpenter could not have raised his claims against SCDC in a PCR application. Therefore, the trial court's Order should be affirmed.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED

Carpenter argues the trial court erred in concluding that adjustment of his "projected max-out date" did not constitute a change in his sentence and, therefore, Carpenter's due process rights were never implicated. (App. Brief p. 27). Carpenter also argues it was a due process violation for SCDC to remove his sentence credits without a hearing after it discovered the statutes under which Carpenter was sentenced did not entitle him to earn credits on his sentence was also a due process violation. (App. Brief p. 28). Carpenter alleges these conclusions were in error and prays that the SCDC Order be reversed.

A. Carpenter failed to address the trial court's ruling on the merits.

Carpenter failed to address the trial court's ruling on the merits of the claims. Specifically, the trial court concluded Carpenter was provided notice, the opportunity to file an institutional grievance, and the right to seek judicial review and, therefore, there were no due process violations. (R. pp. 6-7).

As previously discussed above, Carpenter was afforded notice, the right to file a grievance and an opportunity for judicial review of SCDC's decisions and he chose not to seek such judicial review. Carpenter cannot allege a due process claim for his own failure to avail himself of the right to judicial review of the agency's decision by failing to timely appeal that decision to the ALC. *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014) citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 (stating "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review"].

Since Carpenter has failed to address the trial court's ruling on the merits, the Order should be affirmed. *Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987) (stating "a judgment of the trial court will be affirmed where it appears from the record that the merits of the cause have been fairly tried and determined and that substantial justice has been done"); Rule 208(b)(1)(D), SCACR.

B. "Projected max-out date"

Carpenter contends that when SCDC corrected his "projected max-out date" in its computer system, the correction constituted a change in Carpenter's sentence affording him the right to due process. (App. Brief pp. 27-28).

In *Tant*, the court determined "the length of an inmate's incarceration implicates a constitutional liberty interest" which requires compliance with due process requirements." *Tant*, 408 S.C. at 342, 759 S.E.2d 401. As a result, ". . . whenever the [SCDC] alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing. *Id.*

It is not disputed that if SCDC alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing. *Tant,* 408 S.C. at 337, 759 S.E.2d at 399. However, in Plaintiff's case, SCDC did not alter Carpenter's sentences. SCDC made a clerical adjustment to the "projected max-out date" to accurately reflect the unambiguous sentencing sheets and to match the sentences already listed in his records. (R. p. 44; pp. 284-310) (all providing the following information: total sentence 50 years, current sentence 50 years, current sentence start date 4/7/90). Moreover, Carpenter's own application for habeas corpus filed in federal court in 2002 states, "[l]ength of sentence 25 years & 25 years (50 total)[.]" (*Carpenter v. Maynard et al.,* 3:02-cv-03807, ECF Entry 1, p. 2).

Carpenter's sentences were never unilaterally altered. The sentences correctly reflect the sentences imposed on the two (2) unambiguous sentencing sheets. Therefore, Carpenter's due process rights were not violated, and the Order should be affirmed.

C. Sentence credits

Carpenter also contends that his due process rights were violated when SCDC removed his earned sentence credits without a hearing. (App. Brief p. 28).

"Through *statute*, the State provides that an inmate is 'entitled to a deduction from the term of his sentence' if he 'faithfully observe[s] all the rules of the institution and has not been subjected to punishment for misbehavior.' S.C. Code Ann. § 24-13-210(A)

(2007)." *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 337, 649 S.E.2d 35, 36 (2007), *abrogated by Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012) (emphasis added). In finding a liberty interest in *statutorily entitled* good time credit, the *Furtick* court quoted,

> . . . the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

Furtick, 374 S.C. at 337, 649 S.E.2d at 37 citing *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). The *Furtick* court further stated, "[i]n [*Al-Shabazz*] we acknowledged that '[t]he statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated.'" *Furtick*, 374 S.C. at 338, 649 S.E.2d at 37.

However, unlike in *Wolff, Furtick, and Al-Shabazz*, where the inmates lost credits as punishment, Carpenter's earned sentence credits were not abrogated as punishment. SCDC discovered that the statutes Carpenter was sentenced under prevented him from earning sentence credits.

The evidence before the trial court clearly showed Carpenter was sentenced pursuant to S.C. Code §§ 44-53-370(e)(1)(d) and 44-53-370(e)(2)(e). (R. p. 314). At the time of his sentencing, both statutes provided for "mandatory minimum" terms of imprisonment of not less than twenty-five (25) years, "no part of which may be suspended nor probation granted . . .." *Id.*

Since the uncontradicted evidence demonstrated that Carpenter was never entitled to earn sentence credits, he cannot claim a liberty interest in the credits erroneously given

to him. As Carpenter cannot claim a liberty interest in something he was never entitled to receive, there cannot be a due process violation and the trial court's Order should be affirmed. *Furtick*, 374 S.C. at 338, 649 S.E.2d at 37.

Regardless, as discussed above, Carpenter was afforded notice, the right to file a grievance and an opportunity for judicial review of SCDC's decision. Carpenter cannot allege a due process claim for his own failure to avail himself of the right to judicial review of the agency's decision by failing to timely appeal that decision to the ALC. *Tant*, 408 S.C. at 340, 759 S.E.2d at 401. Therefore, the trial court's Order should be affirmed.

III. THE TRIAL COURT CORRECTLY CONCLUDED THAT NO EQUAL PROTECTION VIOLATION OCCURRED

Carpenter contends he suffered disparate treatment in violation of the Equal Protection Clause because his co-conspirator received sentence credits, was eligible for parole, and was eligible for work release. (App. Brief p. 29).

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination. *King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016) (internal citation omitted). "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *Id.*

Here, the record reflects that in 2010, SCDC discovered by happenstance that its computer system was not programmed to capture inmates who were being processed with twenty-five (25) year day-for-day sentence for trafficking cocaine. (R. p. 925). When it was determined that some inmates' sentences were not correctly reflecting the mandatory

minimum, an audit was performed of inmates serving time for those offenses; Carpenter was one of those inmates. (*Id.*). While Carpenter's sentence was corrected in 2011 to account for the day-for-day requirement by removing credits, his co-conspirator's sentence was not corrected. The record reflects that the co-conspirator was released from SCDC custody prior to the program update. Moreover, the co-conspirator's sentence was never entered as day-for-day, and he received credits as a result. (*Id.*).

Based upon the record, there is no evidence that Carpenter's treatment with regard to the removal of his credits was a result of intentional or purposeful discrimination. Rather, it was a result of computer program's mistake that was subsequently corrected after the co-conspirator's release from SCDC. Carpenter's co-conspirator benefitted from an administrative issue resulting in his early release. This comes at a great cost to the citizens of the State of South Carolina. However, it does not follow that this mistake should result in the release of *all* inmates convicted of the same offenses and correctly sentenced. SCDC's actions were neither intentional nor the result of purposeful discrimination. Therefore, Carpenter failed to prove a necessary element to prevail on his equal protection claim,[1] and the trial court's Order should be affirmed.

IV. CARPENTER'S CLAIM OF JUDICIAL IMPROPRIETY

Carpenter makes various allegations that are not supported by the record and which are inconsistent with the undersigned's recollection of events. (App. Brief pp. 31-39). As stated by Carpenter, the issues alleged were never raised at trial, in a Rule 59(e),

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[1] Carpenter's sole argument to show intentional and arbitrary discrimination was based on SCDC's arguments to the trial court, not upon any testimony or other evidence. (App. Brief pp. 30-31). *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (internal citations omitted) (stating "[a]rguments made by counsel are not evidence).

SCRCP motion or in a Rule 60(b), SCRCP motion, and, therefore, are inappropriate for consideration in this appeal. *See Gaddy v. Douglass*, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004)[2] stating in pertinent part the following:

> On appeal, we hear for the first time that Judge Hughston was an "advocate in these proceedings," and that his involvement "affected his ability to impartially try the case." The simple response is that this court will not address matters not raised and ruled upon in the trial court. *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). In an effort to circumvent the issue preservation rule, a fundamental principle of appellate procedure with which Appellants are familiar, we are once again confronted with a subject matter jurisdiction claim. We reject this desperate, eleventh-hour attack on Judge Hughston and the assertion that he lacked jurisdiction to preside over this case. His authority to render judgment is beyond question, and if Appellants desired his recusal, they should have done so in a proper and timely manner. *See Parker v. Shecut,* 340 S.C. 460, 496–97, 531 S.E.2d 546, 566 (Ct.App.2000) (holding the issue of recusal of the trial judge, to be preserved for appellate review, must be raised in the trial court).

As the arguments are not preserved for appellate review, the trial court's Order should be affirmed.

CONCLUSION

Respondent South Carolina Department of Corrections respectfully requests that the trial court's Order be affirmed.

[2] Carpenter's counsel was also counsel in *Gaddy*.

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CERTIFICATE OF SERVICE

This is to certify that have this day caused to be served upon the persons named below the attached **Final Brief for Respondent South Carolina Department of Corrections** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

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