

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

RECEIVED
OCT 29 2018
SC Court of Appeals

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.

RECORD ON APPEAL
VOLUME I OF III

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INDEX

Volume I of III

Orders and Decisions

Order for Joinder dated February 23, 2017.....	4
Order Denying Motion to Dismiss filed April 25, 2017.....	7
Form 4 Order of Continuance dated May 24, 2017	13
Form 4 Order of Continuance dated May 31, 2017	14
Order for Judgment in Favor of SCDOC dated October 2, 2017	15
Order Dismissing Petition for Writ of Habeas Corpus dated October 2, 2017	25
Order Denying Motion for Reconsideration dated December 19, 2017.....	41

Pleadings

Petition for Habeas Corpus (Expedited) dated November 18, 2016.....	44
Summons and Complaint dated November 18, 2016	47
SCDOC Motion to Dismiss dated December 22, 2016	316
Memorandum in Opposition to Defendant's Motion to Dismiss dated February 10, 2017	319
Amended Summons dated February 21, 2017.....	326
The State Return and Motion to Dismiss dated March 23, 2017.....	327
The State Amended Return to Petition for Writ of habeas Corpus dated April 28, 2017	338
Answer of SCDOC dated May 10, 2017	350
Motion to Bifurcate Trial dated May 10, 2017.....	354
Affidavit of Default SCDOC dated May 12, 2017	356
Affidavit of Default The State of South Carolina dated May 12, 2017.....	369
Motion for Entry of Default Judgment against The State and SCDOC dated May 12, 2017.....	384
SCDOC Motion to Deny Entry of Default/Summary Judgment or in the alternative, to Set Aside Entry of Default dated May 15, 2017.....	386

Memorandum in Support of Relief Requested including Writ of Habeas Corpus dated June 5, 2017.....	393
Motion to Reconsider dated October 5, 2017	422
SCDOC Response in Opposition to Motion to Reconsider filed October 23, 2017.....	432
The State Return to Petitioner's Motion to Reconsider filed October 30, 2017.....	443
Notice of Appeal dated December 20, 2017	445

Transcripts

Transcript of Proceedings April 7, 1990.....	476

Volume II of III

Transcript of Proceedings June 4, 1990.....	498
Transcript of Proceedings August 9, 1990.....	527
Transcript of Proceedings April 6, 2017.....	683
Transcript of Proceedings June 6, 2017.....	737

Other Documents

Ballard Email to Judge Hood confirming status conference dated June 12, 2017	847
Ballard Email to Judge Hood requesting status conference dated June 12, 2017.....	849
Ballard Email to Opposing Counsel confirming client will accept proposal from court dated June 13, 2017.....	850
Judge Hood's Secretary Email to all counsel of record dated June 28, 2017.....	851
Ballard Letter to Judge Hood with Proposed order dated June 30, 2017	855
Returned Letter to Clerk of Court with proposed order filed July 3, 2017.....	866
Judge Hood Email Requesting Orders dated July 12, 2017.....	867
Ballard Email to Judge Hood with objections to proposed Orders from Defendants dated July 21, 2017	869
SCDOC Proposed Order of July 21, 2017.....	874
The State Proposed Order of July 24, 2017	884
Ballard Email to Judge Hood requesting status of Order dated August 28, 2017	898

Trial Exhibits

Plaintiff's Exhibit A	901
Plaintiff's Exhibit B	904
Plaintiff's Exhibit C	924
Plaintiff's Exhibit D	925
Plaintiff's Exhibit E	926
Plaintiff's Exhibit F	927
Defendant's Exhibit 1	964

Volume III of III

Watson Email to defense counsel with signed release June 16, 2017	969
Watson Email to defense counsel dated June 23, 2017	974
Wlodarczyk Email to Watson dated June 23, 2017	975
Mitchell Email to Watson dated June 28, 2017	977
Ballard Email to Judge Hood with exhibits dated June 26, 2017	979
Letter to Clerk of Court with email, proposed order and exhibits dated June 28, 2017	995
Petition for Certification of Appeal dated December 20, 2017	1016

Certificate of Counsel

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

ORDER FOR JOINDER

2017 FEB 23 PM 4:09
 JENNIFER M. HOBBS
 CLERK, P. & C.S.
 RICHLAND COUNTY
 FILED

This matter came before the Court on February 16, 2017, for a hearing on the Plaintiff's expedited Petition for Habeas Corpus and Defendant's Motion to Dismiss. Among other issues, Plaintiff asserts that part of his original sentence is void because the trial judge did not have subject matter jurisdiction to enhance the sentence after the end of the term at which sentencing was to occur. *See Hooks v. State of South Carolina*, 353 S.C. 48, 577 S.E.2d 211 (2003).

As part of Defendant's Motion to Dismiss, Defendant alleged Plaintiff has failed to join a necessary party pursuant to Rule 19, SCRCP. Specifically, Defendant contends that as to the allegations concerning the validity of Plaintiff's sentences, which occurred prior to his incarceration within the South Carolina Department of Corrections ("SCDC"), the State of South Carolina ("the State") is a necessary party because the State has an interest in defending the sentence imposed on the Plaintiff.

After reviewing the pleadings, motions, supporting and opposing memoranda, and hearing the arguments of counsel as well as conferencing with counsel, the Court finds that as to the allegations concerning the validity of Plaintiff's sentences, complete relief cannot be afforded to the Plaintiff unless the State is joined as a necessary party to this

action. Rule 19(a), SCRCP. The Court further finds that the State is subject to service of process and its joinder will not deprive the Court of jurisdiction.

IT IS THEREFORE ORDERED:

- 1) That the State of South Carolina is hereby joined as a defendant to this action under Rule 19, SCRCP;
- 2) That Plaintiff's counsel shall file with the Richland County Clerk of Court an Amended Summons identifying in the caption the State of South Carolina as a party defendant as allowed by Rule 4(i), SCRCP;
- 3) That Plaintiff's counsel shall serve on the State of South Carolina as provided by Rule 4(d)(4), SCRCP, copies of the filed Amended Summons, Complaint and Petition for Writ of Habeas Corpus, and this Order;
- 4) Plaintiff shall serve the Defendant SCDC with a copy of the filed Amended Summons as provided by Rule 5, SCRCP;
- 5) That the Defendant State of South Carolina is invited to respond to the pleadings within the time frames set forth in the South Carolina Rules of Civil Procedure;
- 6) Once proof of service on the State is filed with the Richland County Clerk of Court, the parties will contact chambers to schedule a status conference to address any procedural issues and the timing for an expedited merits hearing.

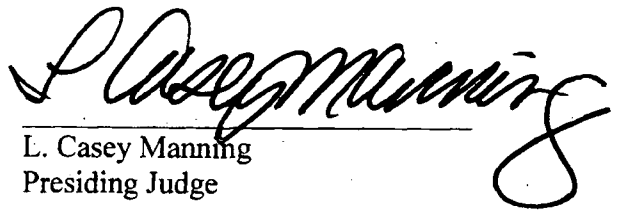
IT IS FURTHER ORDERED that all remaining issues presented to the Court at the February 16, 2017 hearing are held in abeyance until such time as the responsive pleading deadline for the State has passed and the requested status conference held.

[signature block next page]

ROA 0006

Carpenter v. State,
Case No. 2016-CP-40-06916
SIGNATURE PAGE

IT IS SO ORDERED.


L. Casey Manning
Presiding Judge

Columbia, South Carolina

February 23, 2017

ROA 0006

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4006916 **ROA 0007**

Charles Eugene Carpenter

South Carolina Department Of Corrections

PLAINTIFF(S)

State Of South Carolina
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 _____

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

Judge Code 2758

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, 20 17 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)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

ROA 0007

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
	)	
vs.	)	ORDER DENYING MOTIONS TO DISMISS
South Carolina Department of	)	
Corrections, and State of South	)	
Carolina	)	
	)	
Defendant	)	

#1
JST

Plaintiff Charles E. Carpenter (hereafter "Carpenter") is incarcerated at the South Carolina Department of Corrections (hereafter "SCDC"). He filed this action against SCDC for declaratory relief and also filed a Petition for Writ of Habeas Corpus. SCDC moved to dismiss, and Circuit Court Judge Casey Manning issued an order (filed on February 23, 2017) requiring the addition of the State of South Carolina as a defendant by serving the Attorney General (hereafter "the AG"). The AG thereafter filed a motion to dismiss, and both motions to dismiss were heard before me on April 6, 2017.

The motions to dismiss are both denied, for the reasons set forth herein, and this Court finds that jurisdiction to hear Carpenter's matter is vested in this Court, which is fully able to hear the merits of the matters presented. In light of the denial of them motions to dismiss, the defendants are given fifteen (15) to file answers to the complaint and petition.

The complaint, and exhibits attached, establish the following facts:

Carpenter entered a guilty plea to two (2) charges of violation of S.C. Code Ann. Section 44-53-370 on two indictments¹ in a plea agreement dated April 7, 1990. Pursuant to the plea

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).

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.

#2
JST
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
JST
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).

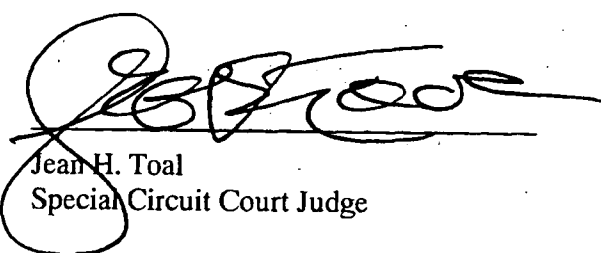
Declaratory relief is available "to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights of a disturbance of the relationships." Thompson v. State of South Carolina, 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).

15
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 19, 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.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP1005913 **ROA 0013**

Charles Eugene Carpenter

South Carolina Department Of Corrections

PLAINTIFF(S)

State Of South Carolina

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. No. Suit);
☐ 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 _____
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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:

Plaintiff's Petition for Writ of Habeas Corpus CONTINUED. Parties shall request status conference for scheduling bench trial and hearing on outstanding motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. Additional Information for the Clerk : _____

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 Joubert NeumanJudge Code 2751 Date May 18, 2017

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of May, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of May, 20 17 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)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

ROA 0013

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2016-CP-40-0014

Charles Eugene Carpenter

SCDC

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 Dismissed without prejudice
- ☐ 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 _____

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 :

This case is continued and needs to be rescheduled with Judge Benjamin. The inmate was not transported.

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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

Judge Code

Date

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 _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

ROA 0014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections
and the State of South Carolina,

Defendants.

(Our File No.: 5021.01216)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**ORDER FOR JUDGMENT IN FAVOR
OF THE SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS**

2017 OCT -2 AM 11:19
JULIA ANDERSON
FILED

Plaintiff brought this declaratory judgment action and petition for writ of habeas corpus asserting he was being detained after the expiration of his sentence and should be immediately released from the custody of the South Carolina Department of Corrections ("SCDC"). A hearing was held in which the parties agreed the facts were undisputed and each party put forth their respective legal arguments as to the merits. After reviewing the documents submitted with the Court and hearing arguments of counsel, the Court now denies the relief sought by Plaintiff.

BACKGROUND

Plaintiff is currently confined in the Evans Correctional Institution of the South Carolina Department of Corrections. Plaintiff filed a Summons and Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus on November 18, 2016. Plaintiff immediately thereafter filed a Motion captioned "Petition for Writ of Habeas Corpus (Expedited)." Service of the documents were accepted by SCDC on November 23, 2016. On December 23, 2016, the undersigned filed and timely served a pre-Answer Motion to Dismiss the action. On February 16, 2017, Defendant filed and served a Memorandum in Opposition to Plaintiff's Petition.

Defendant's motion to dismiss was initially heard by Judge Casey Manning on February 16, 2017. Judge Manning issued an Order providing that the State of South Carolina be made a

ROA 0015

party to the action for the purposes of defending the claim concerning Plaintiff's original sentences.

Plaintiff subsequently served a copy of the Amended Summons, Petition/Complaint and Judge Manning's Order on the State of South Carolina ("State"). On or about March 31, 2017, the State filed and timely served a Return and Motion to Dismiss. On April 6, 2017, a hearing was held before Judge Jean Toal on the motions to dismiss filed by the Defendants. Judge Toal orally denied the motions. However, the written Order denying the motions was not filed until April 25, 2017, at which time a copy of the Order was e-mailed to counsel by the clerk's office. The Order first provided that Defendants would have fifteen (15) days to file Answers. However, the last sentence of the Order stated that Defendants would have fifteen (15) days from the date of the hearing (April 6, 2017) to file Answers and a merits hearing would be scheduled immediately thereafter.

Plaintiff requested a merits hearing with the Chief Administrative Judge on April 11, 2017, which was noticed on April 19, 2017, prior to the Answer deadlines set forth in the Order or pursuant to Rule 12(a), SCRCP.

On April 28, 2017, the State filed and served an Amended Return. On May 10, 2017, Defendant SCDC filed and served its Answer and Motion to Bifurcate one (1) issue to be tried at a later date. On May 12, 2017, Plaintiff e-mailed a copy of his Motion for Entry of Default against Defendants and Motion for Summary Judgment.

A bench trial was convened on June 7, 2017. Prior to the start of the trial, the Court took up the pending motions to bifurcate, entry of default, and summary judgment. Defendant SCDC withdrew the motion to bifurcate. The motion for entry of default was denied, with the consent of the parties, as the facts are not in dispute and the Plaintiff still has the burden of proof against

the State and state agency pursuant to Rule 55(e), SCRCP. As a bench trial was held, the motion for summary judgment is moot and, therefore, is denied.

FACTS

The Plaintiff was indicted in November 1989 by the State Grand Jury for conspiracy to traffic marijuana and conspiracy to traffic cocaine; Plaintiff pled guilty to the charges. Plaintiff was later sentenced to confinement for a period of twenty-five (25) years for conspiracy to traffic in marijuana and an additional twenty-five (25) years for conspiracy to traffic in cocaine. Plaintiff was offered a plea deal in which his cooperation with pending investigations would allow him to serve these sentences concurrently. However, Plaintiff ultimately failed to cooperate and the sentences were ordered to run consecutively. Since Plaintiff's sentencing, he has appealed his sentences and conviction through numerous courts and causes of action. Each court has upheld both his conviction and sentence.

Plaintiff's present arguments for the abrogation of his sentence is as follows:

- 1) That his due process rights were violated when SCDC administratively corrected a computer error that listed an incorrect "projected max-out date" for Plaintiff;
- 2) That his due process rights were violated when SCDC removed earned credits from Plaintiff's sentence; and
- 3) That Plaintiff should receive earned credits because a co-conspirator who was sentenced under the same statute as Plaintiff received credits and, therefore, Plaintiff contends he is receiving disparate treatment.

This Court now holds that (1) SCDC did not violate Plaintiff's due process rights when it corrected the "projected max-out date," (2) Plaintiff had no due process rights in work credits because his sentence did not allow for him to earn such credits, (3) even if SCDC had violated

Plaintiff's due process rights, the procedure and redress Plaintiff sought is improper and Plaintiff failed to appeal his SCDC's administrative decisions, (4) there was no disparate treatment as the Plaintiff is statutorily prohibited from receiving credits on his sentence, and (5) habeas corpus against SCDC is improper.

A. DUE PROCESS RIGHTS

- 1) **Plaintiff's sentence was not recalculated from SCDC's initial determination and, therefore, there is no right to notice or judicial review.**

"Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." *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. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* The *Tant* court determined that "the length of an inmate's incarceration implicates a constitutional liberty interest" which requires compliance with due process requirements. *Id.* As result, the *Tant* court held that "... 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.* 408 S.C. at 342, 759 S.E.2d 401.

As an initial matter, unlike the facts set forth in *Tant*, the sentencing sheets in the present action are unambiguous. The record clearly reflects that in case 90-GS-47-05002, Plaintiff was sentenced on June 4, 1990, to twenty-five (25) years incarceration to run concurrently with a federal sentence that Plaintiff was serving at that time. [Petition, Exhibit D]. Concerning case 90-GS-47-05001, Plaintiff was sentenced on August 9, 1990, to twenty-five (25) years incarceration to run consecutively to the sentence on 90-GS-47-05002. [Petition, Exhibit F].

Accordingly, the facts giving rise to the *Tant* holding, namely, that SCDC interpreted ambiguous sentencing sheets which resulted in an increased sentence without providing the inmate notice and the right to judicial review, are not present in this action. *See Tant*, 408 S.C. 342, 759 S.E.2d 402 (stating “. . . [SCDC] is generally confined to the face of the sentencing sheets in determining the length of a sentence . . .”)¹

It is true that if 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. *Tant*, 408 S.C. at 337, 759 S.E.2d at 399. However, in Plaintiff's case, SCDC did not alter Plaintiff's sentence. SCDC made a clerical adjustment to the “projected max-out date” to accurately reflect the unambiguous sentencing sheet and to match the sentence already listed in his records. [Petition, Exhibits I-Q (all providing the following information: total sentence 50 years, current sentence 50 years, current sentence start date 4/7/90)]. Plaintiff has failed to meet his burden in demonstrating he was entitled to notice of the change in the projected max-out dates and judicial review as there was no change in the sentences, as evidenced by the above records, and there was no testimony regarding what effect, if any, the “projected max-out date” has. *See Tant*, 408 S.C. at 346, 759 S.E.2d at 405 (stating “[SCDC] must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing”).

Plaintiff's sentence was not unilaterally altered by SCDC at any point in time and the sentence correctly reflects that which was imposed on the two (2) unambiguous sentencing sheets and as such, Plaintiff has suffered no due process violations.

¹ Moreover, Plaintiff's own application for habeas corpus filed in federal court in 2002 states, “[l]ength of sentence 25 years & 25 years (50 total)[.]”

2. Plaintiff is not entitled to receive sentence credits.

Plaintiff alleges that he was deprived of his liberty when SCDC removed good time and work related credits from his sentence. [Plaintiff's Memorandum in Support Section II]. The evidence before the Court shows Plaintiff was sentenced pursuant to S.C. Code §§ 44-53-370(e)(1)(d) and 44-53-370(e)(2)(e). [Complaint, Exhibit U]. At the time of Plaintiff's 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.*

As there was no credible evidence presented at trial to counter the facts presented in Exhibit U, Plaintiff has failed to prove it was in error for SCDC to remove all credits from his sentence.

To the extent Plaintiff alleges it was a violation of his due process rights to remove the credits, the argument fails as set forth in section 3 of this Order.

3. Plaintiff's due process rights were not violated.

Assuming *arguendo* that the ministerial change in Plaintiff's "projected max-out date" could be construed as a change in Plaintiff's sentence calculation, Plaintiff was provided notice, the opportunity to file an institutional grievance, and the right to judicial review.² Additionally, with regard to any allegation that Plaintiff's due process rights were violated with regard to the removal of his sentence credits, Plaintiff has failed to show substantial prejudice.

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

² See Tant, "[t]he inmate who is allegedly aggrieved by an ambiguous sentence can, if he chooses, seek judicial review *through the grievance process* and thus, "the interpretation of the unclear sentence" would be "made by a judicial officer." 408 S.C. at 342 n.3, 759 S.E.2d at 401 (emphasis added).

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).

Plaintiff was already afforded the opportunity to challenge the claims of lack of due process concerning the "projected max-out date" and sentence credits. Plaintiff 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. 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.³ 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. The Step 2 response stated that no part of the sentence could be reduced with credits. Plaintiff 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). As such, Plaintiff failed to timely appeal the issue and it is now time barred.

To the extent that Plaintiff may be owed due process concerning his sentence calculation, Plaintiff was afforded notice, the right to file a grievance and an opportunity for judicial review of SCDC's decision; he chose not to seek such judicial review. Plaintiff 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.

4. Plaintiff did not suffer disparate treatment.

³ Plaintiff is not entitled to goodtime or work credits under the statutes he was sentenced.

Plaintiff contends he suffered disparate treatment with regard to the removal of his sentence credits because other inmates received said credits.

“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.*

In the present case, 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. [Plaintiff's Trial Exhibit D]. When it was determined that some inmates' sentences were not correctly reflecting the mandatory minimum, an audit was performed of inmates serving time for these offenses; Plaintiff was one of those inmates. [*Id.*]. While Plaintiff'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 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 Plaintiff's treatment with regard to the removal of his credits was a result of intentional or purposeful discrimination. Rather, it was a result of an oversight that was subsequently corrected after the co-conspirator's release from SCDC. Accordingly, Plaintiff has failed to prove a violation of the equal protection clause.

Based upon the information set forth above, Plaintiff's request for declaratory judgment is denied and judgment is rendered in favor of SCDC.

B. HABEAS RELIEF

SCDC is not the proper party to a habeas petition and this Court is not the proper venue for such relief. The South Carolina Supreme Court has held, "that a matter which is cognizable under the [Uniform Post-Conviction Procedure] Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts." *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). In order for a writ of habeas corpus to be issued, there must be a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). The South Carolina Constitution allows suspension of the writ of habeas corpus only in cases of insurrection, rebellion or invasion, or as the public safety may require it. S.C. Const. Art. I, § 18. However, "our action today does not suspend the writ, but merely curtails its use to those situations where the Act would not be applicable." *Simpson*, 329 S.C. at 46-47.

Additionally, 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. *Id.* Habeas corpus is available only when other remedies, such as PCR, are inadequate or unavailable. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). 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). Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5.

As these claims could be raised under a PCR application, they are procedurally barred and as such, the only avenue through which Plaintiff can file a petition for a writ of habeas corpus is in the original jurisdiction of the Supreme Court.

On the merits, Plaintiff is not entitled to relief for the grounds set forth in the Court's ruling on the claims for declaratory relief.

CONCLUSION

IT IS ORDERED THAT the Plaintiff's Petition and Complaint are DENIED and this action is forever ended with prejudice.

IT IS SO ORDERED.

Re Hood

ROBERT E. HOOD
Circuit Court Judge, Fifth Judicial Circuit

Sep 12
July __, 2017

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-06916

ROA 0025

Charles Eugene Carpenter

South Carolina Department of Corrections and
~~the 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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other .
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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 :

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 (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

ROA 0025

Result As 0026

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Judge Code

Date _____

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

Damon Włodarczyk, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT
Janette W. McBride

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

~~ROA 0026~~

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter, #181783,

Petitioner,

v.

State of South Carolina,
South Carolina Department of Corrections,

Respondent.

ROA 0027
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016-CP-40-06916

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

2017 OCT -2 PM 11:20

This matter comes before the Court by way of a Petition for Writ of Habeas Corpus filed November 18, 2016. The South Carolina Department of Corrections filed a motion to dismiss on December 28, 2016 and a memorandum in support of that motion on February 15, 2017. A hearing was held on February 16, 2017, before the Honorable L. Casey Manning. The State was subsequently joined as a party pursuant to an Order issued by Judge Manning dated February 23, 2017. The State also filed a motion to dismiss. A hearing was held on April 6, 2017 before the Honorable Jean H. Toal where the motions were denied. A bench trial was held on June 7, 2017, at the Richland County Courthouse.

In this action, Petitioner makes claims against the State and against the South Carolina Department of Corrections. This Order dispenses with the claims made against the State. Petitioner asserts that he is being held unconstitutionally because the plea judge lacked jurisdiction and authority to impose a consecutive twenty-five (25) year sentence. First, this Order will detail Petitioner's original charges and subsequent collateral challenges. Then the claims against the State will be addressed.

I. Procedural History

A. Underlying Convictions

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the State Grand Jury Clerk of Court. At a March 1990 session, the South Carolina State Grand Jury (SGJ) issued a seven (7) count superseding indictment against Petitioner and nine (9) other defendants. (1990-GS-47-05-001). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Marijuana (Count 1), and Trafficking in Marijuana (Count 2). At the same session, the South Carolina State Grand Jury issued a superseding eighteen (18) count indictment against Petitioner and ten (10) other defendants. (1990-GS-47-05-002). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Cocaine (Count 1), and Trafficking in Cocaine (Count 2). Petitioner was represented on the charges by Lionel S. Lofton, Esquire.

On April 7, 1990, Petitioner pled guilty before the Honorable Edward B. Cottingham to the conspiracy counts in both indictments in return for the dismissal of the other counts as well as the dismissal of numerous other serious charges.¹ Petitioner pled pursuant to a written plea agreement which provided that he would receive concurrent twenty-five (25) year sentences on the conspiracy counts *if* he abided by the agreement and cooperated with authorities, but the State could request that the sentences be run *consecutively* if he failed to cooperate. Sentencing was deferred until June 4, 1990, at which point the parties returned before Judge Cottingham. Petitioner had moved to fire Mr. Lofton and retain new counsel, Timothy F. Rogers and Michael

¹ While not part of the plea agreement, numerous charges brought by other jurisdictions were dismissed. Marlboro County burglary and kidnapping charges were dismissed. Richland County charges were dismissed. Federal firearm charges were dismissed out of the Florence Division of the U.S. Attorney's Office. It was agreed that sentences on pending North Carolina charges would be served concurrently with the South Carolina sentences. The State further agreed not to pursue charges against Petitioner for offenses that were committed prior to the State Grand Jury indictments.

J. Cox, Esquires. Judge Cottingham allowed Mr. Rogers and Mr. Cox to appear but ordered Mr. Lofton to remain on the case due to his familiarity with the issues and the late nature of Petitioner's decision. Judge Cottingham sentenced Petitioner to twenty-five (25) years' imprisonment and a \$200,000 fine on Indictment 90-002 (Cocaine), but deferred sentencing on 90-001 until a hearing could be held on the State's allegations that Petitioner had breached the plea agreement previously entered by refusing to cooperate.

Judge Cottingham convened a hearing to determine whether Petitioner had breached the plea agreement on August 9, 1990. Testimony was taken from various witnesses including investigators and a codefendant. At the conclusion of the hearing, Judge Cottingham found that Petitioner had willfully failed to cooperate with authorities and indeed had threatened witnesses and codefendants. Accordingly, Judge Cottingham found that Petitioner violated his obligations under the plea agreement and sentenced Petitioner to a consecutive twenty-five (25) years and \$50,000 fine on Indictment 90-001.

Judge Cottingham retained jurisdiction to allow Petitioner a final opportunity to cooperate with law enforcement as required by his plea agreement. On February 3, 1992, Judge Cottingham issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter.

A notice of appeal was timely filed and served on behalf of Petitioner by Mr. Rogers and Mr. Cox. A Transcript of Record was filed with the South Carolina Supreme Court on November 27, 1990. However, on April 12, 1991, Petitioner filed an affidavit requesting to withdraw his appeal, presumably because the imposition of the sentences was not final at that time. A subsequent notice of appeal was filed on February 11, 1992. J. Christopher Mills, Esquire, and Barbara Anne Leitner, Esquire perfected the appeal. The Supreme Court affirmed Petitioner's

convictions and sentences in a memorandum opinion: State v. Carpenter, Op. No. 94-MO-182 (S.C. S. Ct. filed July 15, 1994).

B. PCR Action 1993-CP-13-0255

While the direct appeal was pending, Petitioner filed a petition for writ of habeas corpus dated October 29, 1993. The State moved to construe the petition as a PCR and filed a motion to dismiss the petition. Judge Cottingham granted the motion to dismiss by order dated March 15, 1994.

Petitioner filed a second notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court affirmed the dismissal and ruled that Petitioner was not entitled to relief.

C. PCR Action 1995-CP-13-0244

Next, Petitioner filed an application for post-conviction relief on December 22, 1995. He asserted the following issues:

1. State Grand Jury lacked subject matter jurisdiction;
2. Single conspiracy;
3. Double jeopardy; and
4. Ineffective assistance of counsel.

The State filed a Return and Motion to Dismiss dated March 15, 1996. Petitioner followed with amended applications dated January 26, 1999, and January 28, 1999. The first hearing was held before the Honorable James E. Lockemy on October 8, 1997. Petitioner was represented by Melvin Roberts, Esquire. At this hearing, Petitioner requested access to all State Grand Jury transcripts regarding his case, which the court granted. The next hearing took place on July 20, 1998, where Petitioner testified on his own behalf and where the State called Mr. Lofton. The hearing was continued until August 24, 1998, so that further transcripts could be obtained. Further testimony from Petitioner and Mr. Lofton was taken at the subsequent hearing. Another

hearing was held on January 26, 1999, to discuss various matters and to take more testimony from Petitioner.

On August 28, 1999, Judge Lockemy issued an Order of Dismissal rejecting all of Petitioner's claims. Mr. Roberts then filed a timely "Motion for Amendment to Judgement for a New Trial under Rule 52, SCRCP, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP." The Stated filed a return on October 7, 1999. A hearing was held on the motion on November 11, 1999. Judge Lockemy then issued an Order dated March 10, 2000, in which he held his original Order of Dismissal correctly disposed of the issues raised by Petitioner.

A notice of appeal from Judge Lockemy's Order was timely served and filed. Paul V. Cannarella, Esquire, represented Petitioner on appeal. On January 17, 2000, Mr. Cannarella filed a Petition for Writ of Certiorari, where he raised the following issues:

1. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the grounds of double jeopardy despite the fact that Petitioner was convicted of two counts of conspiracy where only one conspiracy occurred and in finding that trial counsel's failure to object on the ground of double jeopardy did not constitute ineffective assistance of counsel?
2. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that his guilty plea was not knowingly and voluntarily entered and in finding that counsel's failure to object to the unknowing and involuntary nature of the nature of the guilty plea did not constitute ineffective assistance of counsel?
3. Did the Circuit Court err in finding that counsel's failure to move to withdraw the guilty plea did not constitute ineffective assistance of counsel?
4. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that there was a lack of subject matter jurisdiction to defective indictments and in finding that counsel's failure to file any pre-trial motion to question the jurisdiction of the State Grand Jury did not constitute ineffective assistance of counsel?
5. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that Petitioner's sentence exceeds the sentence set out in the statute?
6. Did the Circuit Court err in finding that Petitioner was entitled to Post-Conviction Relief on the ground of the conditions of confinement and in finding that counsel's failure to investigate such did not constitute ineffective assistance of counsel?

The State filed a Return to the Petition for Writ of Certiorari dated April 18, 2001, and Petitioner followed with a Reply dated April 30, 2001. On December 13, 2001, the South Carolina Supreme Court denied certiorari, and the Remittitur was sent down on January 10, 2002.

D. Federal Habeas Corpus Petition

Petitioner then filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on November 12, 2002 (3:02-cv-3807-HMH). The State submitted a motion for summary judgment and memorandum in support on March 7, 2003. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant summary judgment dated October 6, 2003. On January 21, 2004, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. By order filed July 1, 2004, the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

E. PCR Action 2008-CP-13-0281

Petitioner then filed a *third* application for post-conviction relief on July 3, 2008. The State filed a Return and Motion to Dismiss on October 24, 2008, requesting that the application be dismissed with prejudice because it was filed outside the statute of limitations and was successive to his previous applications. A hearing was convened at the Darlington County Courthouse on January 15, 2009, where Petitioner was present and represented by Tommy A. Thomas, Esquire. The State was represented by Karen C. Ratigan of the South Carolina Attorney General's Office. By order filed February 2, 2009, the Honorable John M. Milling dismissed

Petitioner's application with prejudice. A motion to alter or amend was filed on March 13, 2009, and an amended order of dismissal was filed on April 9, 2009.

A timely notice of appeal was filed. Mr. Thomas stayed on to represent Petitioner on appeal and filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 21, 2009. The State filed its Return on November 20, 2009. The Supreme Court denied the petition on September 23, 2010. The Remittitur was issued on October 12, 2010.

II. Discussion

In the matter currently before the Court, Petitioner has filed another Petition for Writ of Habeas Corpus against the State alleging that Judge Cottingham did not have jurisdiction or authority to impose a consecutive twenty-five (25) year sentence. Petitioner concludes that if the consecutive sentence was illegal, then he has completed service of his original twenty-five year sentence and is entitled to release.

Historically, a petition for a writ of habeas corpus was a common-law writ for relief and only available to attack the jurisdiction of the court who imposed the sentence. See Williams v. Ozmint, 380 S.C. 473, 476, 671 S.E.2d 600, 601 (2008) (citing Ex parte Klugh, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court whose judgment is challenged)). "The great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting Walker v. Wainwright, 390 U.S. 335, 336 (1968)). The enactment of the Uniform Post-Conviction Procedure Act², however, "drastically limited the availability of habeas corpus." Id. (citation omitted). Post-conviction relief was intended to include all "relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral attack under any

² S.C. Code Ann. §§ 17-27-10, et. seq. (2003).

common law, statutory or other writ, motion, petition, proceeding, or remedy.” See Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 430 (1998); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting post-conviction relief “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence”).

Regardless, the South Carolina Constitution provides for the possibility of habeas corpus relief. S.C. Const. Art. 1, § 18: “Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights. For these reasons, a defendant bears a much higher burden in a habeas proceeding.” Williams v. Ozmint, 380 S.C. at 477, 671 S.E.2d at 602. A writ of habeas corpus is reserved for only the most serious of constitutional violations which – in the setting – constitute a “denial of fundamental fairness shocking to the universal sense of justice.” Id. (citing Green v. Maynard, 349 S.C. 535, 538, 564 S.E.2d 83, 84 (2002)); see also Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). This Court has held, however, that not “every constitutional error at trial will justify issuance of the writ.” McWee v. State, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (quoting Green v. Maynard, 349 S.C. at 538, 564 S.E.2d at 84). This Court will grant a writ of habeas corpus only under “unique and compelling circumstances.” Id. Habeas corpus is available only when other remedies – such as post-conviction relief – are either inadequate or unavailable. See Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998)

A. Motion for Default is Denied

Petitioner filed a motion for default against the State on May 12, 2017. In the motion, Petitioner argues that the State did not file a timely answer to the complaint. This Court finds the State filed a timely responsive pleading addressing the full procedural issues and merits of the claims made by Petitioner. A return to a Petition for Writ of Habeas Corpus is an appropriate

responsive pleading. The State has defended this action since being joined and has filed a motion to dismiss and a thorough return to the Petitioner. This motion is denied.

B. This Action is Procedurally Barred

The State argues that this action is procedurally barred. This Court agrees. A state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)³. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in a successive PCR application filed in the appropriate county.⁴ Furthermore, "[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, 500 S.E.2d at 124. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. at 570, 500 S.E.2d at 124. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d at 428. A petitioner may allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d at 124.

Petitioner fails to meet the standards required for the issuance of this extraordinary writ. The Petition is improperly filed in the circuit court as it must be filed in the original jurisdiction

³ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation "which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. 466, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

⁴ Petitioner's underlying charges arise from Chesterfield County, not Richland.

of the Supreme Court. Furthermore, Petitioner made no allegations that PCR remedies have been exhausted or any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. The filing of a PCR application is the proper way to bring this action. The allegations that the trial court lacked jurisdiction to impose the sentence are explicitly covered by the PCR act. See S.C. Code Ann. § 17-27-20(A) ("Any person who has been convicted of, or sentenced for, a crime and who claims: . . . (2) That the court was without jurisdiction to impose the sentence."). Petitioner's other allegation that his sentence has expired is also explicitly covered by the PCR act. See S.C. Code Ann. § 17-27-20(A) ("(5) That his sentence has expired . . .").

Petitioner argues this argument was addressed by Judge Toal in her Order denying the motions to dismiss. That Order only ruled that Petitioner had made sufficient showing, in the light most favorable to him, that he had pled a cognizable claim under Rule 12(b), SCRCP. Petitioner then was able to see if he could meet his burden in proving his case under the applicable legal framework before this Court.

C. Merits

This Court further finds that even if it were to excuse the procedural bar, the Petition must fail on the merits. The trial court had proper jurisdiction to impose the sentences. Petitioner argues that the trial court did not have jurisdiction to impose a sentence on the trafficking in marijuana indictment. Specifically, Petitioner argues that he was sentenced to concurrent terms on June 4, 1990. This Court finds the trial court exercised proper jurisdiction over the case in deferring sentencing and imposing a consecutive twenty-five (25) year sentence. Furthermore, Petitioner has not made a sufficient showing that the alleged constitutional violations have denied him fundamental fairness that is shocking to the universal sense of justice.

An applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. The record completely refutes Petitioner’s claims that Judge Cottingham improperly deferred sentencing while retaining jurisdiction over the case.

The chief administrative judge for general sessions for the Fifth Judicial Circuit oversees the State Grand Jury and is referred to as the “presiding judge” throughout the State Grand Jury Act. S.C. Code Ann. § 14-7-1630(B). The presiding judge is responsible for the docket management of all criminal and civil proceedings arising out of the State Grand Jury including issues with subpoenas, the impanelment of the jurors, and the bond hearings for defendants indicted by the SGJ. The presiding judge also handles all of the administrative matters relating to the SGJ including issuance of orders, search warrants, and arrest warrants. Id. Once a defendant is indicted and after a venue order is entered, the Chief Justice of the Supreme Court assigns a judge to “take jurisdiction of and preside over all civil and criminal proceedings, with the exception of post-conviction relief matters, arising out of that investigation and set terms of court for the trial of these cases in the county where venue is set by the Presiding Judge of the State Grand Jury.” See Administrative Order State Grand Jury, S.C. Sup. Ct. Order dated March 20, 2003.⁵

In Petitioner’s case, venue was ordered in Chesterfield County. Judge Cottingham was assigned by the Chief Justice to preside over all cases arising out of the investigation. See Order,

⁵ This Order was issued after Petitioner had been sentenced, but these were the procedures in place at the time. The Supreme Court issued an order that “the Honorable Edward B. Cottingham, be, and he hereby is, vested with concurrent jurisdiction in all circuits of the state to dispose of all common pleas and general sessions matters, including trials by jury, arising from State Grand Jury Investigation No. 89-005.” S. Ct. Order issued November 15, 1989.

S.C. Sup. Ct. Order dated November 15, 1989. With that order, Judge Cottingham had jurisdiction over Petitioner's case along with his codefendants' cases. This allowed Judge Cottingham to get a full picture of the investigation and the allegations set forth in the indictments. Judge Cottingham had the authority to manage Petitioner's case as he saw fit. The trial court was not limited in its jurisdiction as it may have been if Judge Cottingham had been assigned a specific weekly term of court because he was vested with continuing jurisdiction over the case, unique to SGJ cases.

Petitioner further argues that Judge Cottingham was without authority to defer sentencing. Since there was clearly continuing jurisdiction over Petitioner's case, the question turns to whether Judge Cottingham properly deferred sentencing. "Judgment in a criminal case is not final until sentence is imposed." State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985). Here, Petitioner's sentence was not final until he was sentenced on the trafficking in marijuana charge. That sentence was imposed on August 9, 1990, as evidenced by the sentencing sheet. Judge Cottingham was well within his authority to defer sentencing and to provide Petitioner an opportunity to cooperate as set forth in the plea agreement. It is important to note that while Petitioner argues Judge Cottingham was without subject matter jurisdiction, the question is really whether Judge Cottingham had the power to act in a particular manner. See State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008) (distinguishing jurisdiction from subject matter jurisdiction and explaining that a trial judge is without the power to act under the general rule despite the existence of subject matter jurisdiction).

Petitioner further argues that for Judge Cottingham to have proper jurisdiction over the August 9, 1990 hearing there must have been a specific order assigning special jurisdiction. Absent the supreme court order assigning jurisdiction over the SGJ case to Judge Cottingham,

Petitioner was unable to produce any other records to support his argument that the court was without authority to impose the consecutive sentence. This Court will not speculate as to the existence or nonexistence of any other orders. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). It is incumbent upon one who challenges a proceeding to prove his claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001). Petitioner has failed to show that any irregularities occurred. It is clear that the August 9, 1990 hearing was scheduled by Judge Cottingham. Both parties and the attorneys, a clerk of court, and a court reporter were present. This Court finds it difficult to fathom that Judge Cottingham was operating without jurisdiction and without authority from the supreme court to impose a sentence on the second count of the indictment.

Petitioner further argues that his sentence has expired. This is based on the faulty assumption that he was sentenced to concurrent terms of twenty-five (25) years' imprisonment. The comprehensive record shows that Petitioner was sentenced to *consecutive* terms of twenty-five (25) years' imprisonment. If this Court were to find that the trial court did not have jurisdiction, then a sentence would not have been imposed on the trafficking marijuana indictment. This would not require release and could possibly require a remand to have that sentence imposed.

III. Conclusion

Finally, the Court dismisses this action and denies relief. While the action is procedurally barred, a thorough analysis of the allegations shows that the action is without merit. Judge Cottingham exercised appropriate authority and jurisdiction over the same and imposed a consecutive twenty-five year sentence. While the Court recognizes Petitioner was sentenced to a

significant term of imprisonment, it was a sentence Petitioner was statutorily eligible for and Judge Cottingham possessed the discretion to run the sentences consecutively. Thus, it is clear that Petitioner's constitutional rights are not being violated and that he is being held by SCDC lawfully.

IT IS THEREFORE ORDERED THAT:

1. The Petitioner for Writ of Habeas Corpus is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of Sept, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge

Columbia, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-06916

ROA 0041

Charles Eugene Carpenter

~~South Carolina Department of Corrections and
the 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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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 :

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 (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

ROA 0041

ROA 0042

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Judge Code

Date: 11/17/2017

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

Clay Mitchell, SCAG

ATTORNEY(S) FOR THE DEFENDANT(S)

K OF COURT
Janette W. McBride

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

~~ROA 0042~~

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Charles Eugene Carpenter)
Plaintiff)
vs.)
South Carolina Department of)
Corrections)
Defendant)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016 – CP – 40 – _____

**PETITION
FOR WRIT OF HABEAS CORPUS
(EXPEDITED)**

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:45
JEANNETTE W. MCBRIDE
C.P. & G.S.

Plaintiff Charles Eugene Carpenter (hereafter "Carpenter"), petitions for an order for Writ of Habeas Corpus requiring that he immediately be released from the custody of defendant South Carolina Department of Corrections (hereafter "SCDC"). In support, Carpenter would show:

1. Carpenter is a citizen and resident of the County of Anson, State of North Carolina, but has been in the custody of the South Carolina Department of Corrections since May 8, 1990.
2. Contemporaneously with the filing of this Petition, Carpenter has also filed an action for declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 *et seq.* seeking a declaration that Carpenter should have been released from the custody of SCDC prior to the filing of this action, and is therefore being illegally detained.
3. The allegations of that complaint and all exhibits thereto are incorporated herein where relevant as fully as if reproduced herein verbatim.
4. On information and belief, and based on the grounds set forth in the complaint in this action, Carpenter should have been released from the custody of SCDC in 2015. His

continued incarceration is in violation of statutory and constitutional provisions for the following reasons.

- (a) The trial judge lacked jurisdiction to impose a sentence on Case No. 90-GS-47-5002 or to modify the sentence in any way after the term of court in June, 1990 adjourned *sine die*.
- (b) The trial judge lacked jurisdiction to undertake a non-jury criminal adjudication of Carpenter's compliance with the plea agreement without a jury trial on August 9, 1990 and to "enhance" Carpenter's sentence on 90-GS-47-5002 as a result of his non-jury findings and knowledge he gained as a result of his service as presiding judge over the Statewide Grand Jury. Each and every allegation set forth in this complaint is incorporated herein where relevant as if repeated in this section verbatim.
- (c) SCDC violated Carpenter's due process rights in 2011 when it unilaterally modified his sentence to provide for a "max-out" date of 2040, replacing the original "max-out" date of 2015 and/or 2016 previously recorded and under which Carpenter had served his sentence for 21 years.
- (d) SCDC violated Carpenter's equal protection rights by denying him sentencing, work and good time credits on his sentence when other persons convicted of the same crime, and in one case, on the same indictment, were allowed to earn and receive those credits, as well as work release, parole and supervised furlough. At least one of the persons with the same sentence was released from SCDC in 2001 and completed his sentence in 2002 despite having the same sentence as Carpenter.

5. Carpenter would show that the accompanying complaint and this petition herein present issues of law only, and therefore do not require any discovery nor any findings of fact.
6. Because he is being held in violation of his constitutional rights, Carpenter prays for an expedited hearing on the legal issues presented immediately following the filing and service of responsive pleadings.

PRAYER FOR RELIEF

Having fully set forth the grounds for the relief sought herein, Carpenter prays for an order:

- (a) Granting him a writ of habeas corpus and requiring the Defendant SCDC to immediately release him from custody and reflect his sentence as having been fully served.
- (b) For such other relief as the court deems just and proper.



Desa Ballard
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BALLARD & WATSON
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Facsimile 803.796.1066
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harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

November 18, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff(s)

vs.

South Carolina Department of Corrections,

Defendant(s)

IN THE COURT OF COMMON PLEAS
ROA 0047

CIVIL ACTION COVERSHEET

2016-CP - 40- 6916

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:43
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Submitted By: Desa Ballard
Address: Post Office Box 6338, West Columbia, SC 29171

SC Bar #: 00498
Telephone #: 803.796.9299
Fax #: 803.796.1066
Other:
E-mail: desab@desaballard.com;
service@desaballard.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☒ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Acc. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

ROA 0047

Submitting Party Signature: *Am. Hansett*

Date: *November 18, 2016*

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq. **ROA 0048**

ROA 0048

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

ROA 0049

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

ROA 0049

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Charles Eugene Carpenter,)

Plaintiff)

VS.)

South Carolina Department
Of Corrections,)

Defendant)

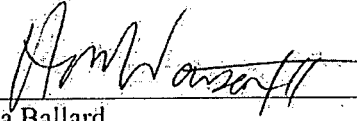
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2016-CP-40- 6916

SUMMONS
(Non-Jury)

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at her office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Desa Ballard
Harvey M. Watson III

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harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

November 18, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Charles Eugene Carpenter)
Plaintiff)
vs.)
South Carolina Department of)
Corrections)
Defendant)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Case No. 2016 - CP - 40 - 6916

**COMPLAINT and PETITION
FOR WRIT OF HABEAS CORPUS
(Non-jury)**

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:43
JANETTE W. MCBRIDE
C.C.P. & G.S.

To: Defendant South Carolina Department of Corrections

Plaintiff Charles Eugene Carpenter (hereafter "Carpenter"), complaining of the Defendant South Carolina Department of Corrections, (1) seeks a declaratory judgment as to issues outlined herein, and (2) petitions for an order for Writ of Habeas Corpus requiring that he immediately be released from the custody of SCDC. In support, Carpenter would show:

ALLEGATIONS COMMON TO ALL CLAIMS

1. Carpenter is a citizen and resident of the County of Anson, State of North Carolina, but has been in the custody of the South Carolina Department of Corrections since May 8, 1990.
2. On information and belief, the Defendant South Carolina Department of Corrections (hereafter "SCDC") is an agency created by statute, and part of the executive branch of state government, with only such powers and authorities as are granted to it by statute.
3. Carpenter was arrested and charged in state court with trafficking in marijuana and cocaine on November 27, 1989.

I. DECLARATORY JUDGMENT

4. This is an action for declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 *et seq.* as well as a Petition for Writ of Habeas Corpus. There is a justiciable controversy between the parties as set forth herein because Carpenter should have been released from the custody of SCDC prior to the filing of this action, and is therefore being illegally detained.

A. LACK OF JURISDICTION AND DUE PROCESS VIOLATION

5. Each and every allegation set forth in this complaint is incorporated herein where relevant as if repeated in this section verbatim.
6. On April 7, 1990, Carpenter signed a plea agreement with the State, a copy of which is attached hereto as **Exhibit A** and incorporated herein. The terms for that agreement provided, *inter alia*,
- (a) Carpenter would enter a plea of guilty to two counts of violating S.C. Code. Ann. Section 44-53-370(c), *i.e.*, trafficking in marijuana and cocaine.
 - (b) Sentencing would be done pursuant to Section 44-53-370(e)(2) with regard to Count One of Indictment 90GS4705002;
 - (c) Sentencing would be done pursuant to Section 44-53-370(e)(1)(d) with regard to Count One of Indictment 90GS4705001.
 - (d) The State will recommend that the Court impose a sentence of 25 years.
 - (e) Carpenter would provide information to the State and cooperate in investigations.
 - (f) If the State's obligations under the plea agreement become "null and void... the State may argue for a maximum sentence for the offenses to which [Carpenter] pled guilty"

(g) "The Attorneys for the State agree to recommend that any sentences of incarceration of the Defendant, Charles Eugene Carpenter... receives as a result of these pleas shall be concurrent terms of incarceration, and that the Defendant has no right to withdraw his plea, with the further understanding that should the Defendant fail to fulfill the terms of this agreement, then the State may recommend that any sentence be run consecutive, each Count to the other."

(h) "The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statement of the parties, that this Agreement may be modified only in writing and signed by all parties, except as to the matters placed on the record in open court on April 7, 1990, and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void."

7. At the time Carpenter entered his plea of guilty to the two charges embraced by the plea agreement, the presiding circuit court judge was Edward W. Cottingham. See Exhibit B, a copy of the transcript of the hearing held April 7, 1990, incorporated in its entirety by reference.
8. At that time, Judge Cottingham stated "Now, I tell you that this Court will abide by this plea agreement. I tell you that upon the record." Exhibit B (Tr. page 10, lines 19 -- 20).
9. Judge Cottingham also stated "If I conclude upon proper presentation that you have not [cooperated with law enforcement], then this plea agreement to you and to me is void and of no effect." Exhibit B (Tr. page 11, lines 4-6).

10. In Judge Cottingham's colloquy with counsel, he stated "And as I understand it the understanding is it is 25 years concurrent?" and the reply was "yes." Exhibit B (Tr. page 13, lines 5-7).
11. Prior to entry of the plea, the prosecutor stated "If I could also ask that the Defendant understand that this is a mandatory term of imprisonment, that it is a mandatory minimum, the sentence cannot be suspended, probation can't be granted and it is a sentence that does not have eligibility for parole until the passage of 25 years." Carpenter's counsel indicated Carpenter's understanding of that term as part of the plea. Exhibit B (Tr. page 20, lines 1-7).
12. Judge Cottingham concluded the entry of the plea by stating that "I am going to abide by the plea agreement. [Carpenter] is entitled to that, and I will do that." *Id.* at lines 14-15.
13. The plea of guilty to both counts was entered and accepted on April 7, 1990.
14. Carpenter was later sentenced on June 4, 1990. See **Exhibit C**, a copy of the transcript of the hearing held June 4, 1990, incorporated in its entirety by reference. At the time of sentencing, the State advised the Court that Carpenter "has not been conforming to the terms of the agreement." *Id.* at Tr. page 9, lines 6-8.
15. At sentencing, Judge Cottingham stated:

it is my intention to comply exactly with the terms of the plea agreement. In doing so, however, I would require the Defendant to do the exact same thing. Now the question has been raised as to whether or not he has in effect complied. If he has, of course, I am going to sentence him to the minimum 25 years concurrent... If he has not, then I will deal with him accordingly and I would change his sentence to speak to his lack of cooperation.

Exhibit C (Tr. page 10, lines 16-24).

16. Upon inquiry by Carpenter's counsel, Judge Cottingham stated that he was going to decide whether to sentence Carpenter on both indictments after hearing from the State, and

if... there exists probable cause to hold a hearing as to whether or not he has in effect complied with this hearing [*sic*], I am going to sentence him on one Count, cocaine. I am going to sentence him exactly according to the plea agreement. I then later will hold a hearing as to whether or not he has complied with his plea agreement... If I conclude from that hearing that he did, in effect, comply, I will make any sentence on that charge, which is the trafficking in marijuana, concurrent with what I do today. If I conclude that he has not complied with the plea agreement, then I will impose such additional sentence as I think is appropriate under the circumstances.

Exhibit C (Tr. page 11, line 13 – p. 12, line 3).

17. The State asked the trial judge to "enforce the terms of the plea agreement by requiring or imposing a consecutive sentence" upon Carpenter. Exhibit C (Tr. p. 11, lines 13-16). Carpenter's counsel objected to the bifurcation of sentencing. *Id.* at p. 16, lines 16-25. The hearing proceeded over objections of Carpenter, through his counsel. *Id.* at p. 19, line 20 – p. 20, line 1.
18. On information and belief, the trial judge did not have authority to unilaterally bifurcate the sentencing proceeding, to assume continuing jurisdiction to adjudicate Carpenter's compliance with the plea agreement for purposes of enhancing his sentence, to delay sentencing on the second plea which was then before him for sentencing, or to do so without granting Carpenter a jury trial for the purpose of determining whether Carpenter complied with the plea agreement. The trial judge's actions deprived Carpenter of due process of law.

19. Further discussion on the record at the June 4, 1990 sentencing made clear that the sentencing judge was going to, *sua sponte*, conduct a factual hearing on new matters that were not embraced by the pleas already entered (and which were not the subject of further charges, arrests or indictment) to determine whether he, under his erroneously continued jurisdiction, would choose to adjudicate facts, without a jury trial to determine whether to sentence Carpenter on the second indictment to a concurrent term or a consecutive term. See Exhibit C (Tr. p. 24, line 6 – p. 27, line 3).
20. Carpenter was, in fact, sentenced to 25 years in prison on June 4, 1990 on Count One of Case No. 990-GS-47-5001. See attached **Exhibit D**, a sentence sheet executed that date.
21. The trial judge convened a second sentencing hearing, without jurisdiction to do so, on August 9, 1990. See **Exhibit E**, a copy of the transcript of that hearing. Carpenter again objected to the second hearing, renewing an earlier objection made in June, all of which was acknowledged by the Court. Exhibit E (Tr. p. 4, lines 18-24).
22. The trial judge characterized the proceedings which were occurring as a hearing on “contempt in disobedience of the plea agreement.” Exhibit E (Tr. p. 144, lines 22-24). He also characterized the inquiry which was occurring as a determination of whether Carpenter had “breached his agreement.” *Id.* (Tr. p. 144, lines 14 – 25).
23. Without a criminal charge pending against Carpenter, without advising Carpenter of his rights to a jury trial or other constitutional protections, and notwithstanding the existence of his plea already having been entered and accepted and a sentencing hearing already concluded, the trial judge proceeded to take testimony from witnesses to determine whether Carpenter had complied with his obligations under the plea agreement.

24. Counsel objected and correctly pointed out that there were no additional charges brought against Carpenter, and the evidence to be presented had to do with matters which occurred after the plea agreement had been entered and accepted, and therefore were not properly up for consideration.¹
25. The Court took testimony from multiple witnesses for the State², much of which was conclusory, prejudicial, and not supported by any documentary evidence. Much of the testimony came from agents of the State summarizing their investigations into Carpenter's activities and inferring that Carpenter was threatening witnesses and speculating about assets that Carpenter may have derived from illegal activity, and generally postulating about their entire investigation.
26. After hearing from the witnesses, the trial judge said "There has not been made, before me, a single showing of additional cooperation by [Carpenter] since the plea agreement was entered into. Nobody has come forward and said, Judge, he cooperated, he did this, that, and the other. There's not one single incident today before me where, and according to that plea agreement, he has done anything." Exhibit E (Tr. p. 134, lines 12 - 19).
27. The trial judge continued "I'm inclined to think he knows who [an unidentified alleged co-conspirator] is... I'm not asking him to disclose that to me, but, you know... [I] was born at night but not last night." Exhibit E (Tr. p. 136, lines 19-25).

¹ Carpenter's counsel astutely observed "There is a clean way for the State to accomplish what they're attempting to do. This is a muddy way, but I guess they're entitled to proceed whichever way they want to proceed." Exhibit D at page 10, lines 9-13.

² Exhibit E includes the testimony of Eddie Gordon of the "Governor's Raid Team" (p. 15); Ricky Lynn Johnson, a co-defendant (p. 85); Dorthica Galloway of the "Governor's Raid Team" (p. 93); Robert Kent Hoover, a co-defendant (p. 98); Kenny Ray Taylor, a co-defendant (p. 104); and Joseph Earl Smith, a co-defendant (p. 111) for the State. Carpenter's counsel called one witness, Bobby Gene Horne, a co-defendant. (p. 116).

28. The trial judge continued "I may be wrong, but I really conclude that... Carpenter has absolutely, is absolutely thumbing his nose at the Court and to the State of South Carolina..." Exhibit E (Tr. p. 138, lines 10-13).

29. The trial judge continued

This Defendant pled guilty to serious charges, trafficking in cocaine and marijuana. Of course, I've been the presiding judge over this whole grand jury indictment and I've got a feel now, based on the pleadings and what I have heard now, for what occurred and who did what. There's no question about it, that this man was the key man at the top of the whole organization. It's clear. If anybody in the world has got information about who did what, it's him.... I've got to conclude that he failed to cooperate.

Exhibit E (Tr. P. 139, lines 16-24; p. 140, line 2).³

30. The trial judge concluded

I find beyond absolutely any doubt in my mind that the State of South Carolina has lived up to their agreement in every respect. I further find that he has failed to do so. And based on the plea agreement, I'm going to, one, leave the first part of the sentence, on the number two indictment, as it was. . . And I find he's failed to cooperate in this one. And I find he's failed to cooperate with the terms of the agreement. I further find that an enhancement of the sentence is proper under the circumstances and that connection with regards to the indictment for trafficking in marijuana, it is the sentence of this court that he be confined for a period of twenty-five (25) years, consecutive to the sentence previously imposed upon the indictment for trafficking in cocaine.

Exhibit E (Tr. P. 141, lines 2 - 25).

31. The trial judge made no determination of the burden of proof or persuasion to which he subjected the evidence he considered, or the weight of the evidence that he relied upon to

³ The trial judge's disdain and even contempt for Carpenter was apparent on the record. "I've heard enough, and I could be right or wrong, but I think I'm right in the thing. I think that he's using the system and he continues to attempt to use the system... he hired you at the last possible minute, and then made a horrendous allegation against one of our most outstanding lawyers in the State of South Carolina." Exhibit E (Tr p. 140, lines 11 - 24).

declare that Carpenter's sentence should be "enhanced." He did state that he found the testimony of one of the State's witnesses to be "viable." Exhibit E (Tr. p. 144, line 12).

32. The trial judge even conceded that he may not have jurisdiction to bifurcate the sentencing and proceed as he did on August 9, 1990 when he imposed a consecutive 25-year sentence. He 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." Exhibit E (Tr. p. 141, line 21 - p. 142, line 1)⁴.

33. Despite that, the trial judge conducted the hearing and then ultimately concluded "The sentence is here today and I'm through with it. I'm just leaving an avenue open in the event he demonstrates to you, to the extent that you [the State] wants to make a motion for me to reconsider this hearing and I'll do it, but I'll do it within thirty days. Exhibit E (Tr. p. 143, lines 2 - 6).

34. The trial judge reiterated "Now, let me get this clear. The hearing is now over." Exhibit E (Tr. p. 145, lines 6-8). "I've made a ruling. I'm gone [*sic*] stand by it. And I'm not gonna re-open that." *Id.* (Tr. p. 145, lines 18-19). But despite repeated claims he would not reopen the hearing⁵, the judge continued to allow for reconsideration of the consecutive nature of the sentence imposed if the State, not Carpenter, requested the reconsideration be made. *Id.* (Tr. p. 146, lines 1 - 6).

⁴ The trial judge stated that "ordinarily, in general sessions court, after the term ends, but nobody knows when the term of the grand jury ends." (Tr. p. 142, lines 19-21). The trial judge may have been arguing that he had continuing jurisdiction, not as a general sessions judge, but as the judge who was presiding over the grand jury, to leave open the sentencing and make an evidentiary ruling that permitted him to "enhance" the sentence.

⁵ "I don't want to do anything to open up this hearing again and I'm not gone [*sic*] beat a dead horse to death." Exhibit E (Tr. p. 146, lines 9-11).

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35. The trial judge characterized his decision of August 9, 1990, a decision to "enhance" the sentence on the trafficking in marijuana charge. Exhibit E (Tr. p. 146, lines 19-21).

36. On that date, the trial judge sentenced Carpenter on Case No. 1990-GS-47-05001 to a fine of \$50,000 and a term of 25 years, consecutive to the sentence earlier entered on Case No. 1990GS-47-05002. **Exhibit F.**

37. Based on the foregoing, Carpenter seeks a declaratory judgment finding and order declaring the following:

(a) The trial judge lacked jurisdiction to bifurcate the sentencing proceeding, and therefore lacked jurisdiction to reconvene the sentencing proceeding and impose a consecutive sentence of 25 years (Case No. 1990-GS-47-05001) on August 9, 1990. The trial judge's jurisdiction concluded with the *sine die* adjournment during the term of General Sessions which was held the week of June 4, 1990.

(b) The trial judge and/or the State violated Carpenter's due process rights when they tried Carpenter on charges that had not been brought against him and *sua sponte* took testimony and found Carpenter guilty of violating the plea agreement, when no additional charges had been brought and that matter was not before the court.

(c) The trial judge and/or the State violated Carpenter's constitutional rights in that they failed to advise Carpenter of his right to a jury trial on the issue of whether Carpenter had complied with the plea agreement, especially when Carpenter had not been charged with an additional criminal offense related to the plea agreement.

(d) The trial judge and/or the State violated Carpenter's constitutional rights when the court imposed an "enhanced" sentence on Carpenter on Case No. 1990-GS-47-05001

based on conduct that occurred after the plea had been entered and accepted and was unrelated to the offense to which Carpenter pleaded.

(e) The trial judge violated Carpenter's constitutional rights when he openly permitted the knowledge he had gained as the presiding judge for the Grand Jury (much of which was unknown to Carpenter) to be considered in determining a sentence for Carpenter on Case No. 1990-GS-47-05001.

(f) The sentence imposed on Case No. 1990-GS-47-05001 was illegal and should be vacated, and Carpenter should immediately be released from custody by SCDC.

B. DUE PROCESS VIOLATIONS BY THE DEPARTMENT OF CORRECTIONS

38. Each and every allegation set forth in this complaint is incorporated herein where relevant as if repeated in this section verbatim.

39. Upon his remand to the custody of SCDC in 1991, the SCDC determined and recorded in Carpenter's "Conviction Summary" that Carpenter's "max-out" or projected release date on 1990-GS-47-5001 was October 4, 2003, while his "max-out" date on 1990-GS-47-5002 was November 23, 2016. **Exhibit G.**

40. From that time forward, Carpenter's published max-out dates fluctuated between dates in which the recalculation was documented. To wit:

(a) As of June 2, 1993, Carpenter's Program Status Review from SCDC reflected a projected "max-out" date of July 7, 2015. **Exhibit H.**

(b) As of May 26, 1993, Carpenter's Offender Summary reflected a projected "max-out" date of July 7, 2015. **Exhibit I.**

- (c) As of January 20, 1995, Carpenter's Offender Summary reflected a work release eligibility projection of February 6, 2015 and a projected "max-out" date of April 4, 2017. **Exhibit J.**⁶
- (d) As of March 30, 1995, Carpenter's Offender Summary reflected a work release eligibility projection of July 4, 2017 and a projected "max-out" date of December 4, 2019. **Exhibit K.**⁷
- (e) As of June 22, 1999, Carpenter's Offender Summary reflected a projected "max-out" date of July 4, 2019. No work release eligibility was shown. **Exhibit L.**⁸
- (f) As of March 28, 2002, Carpenter's Offender Summary reflected a projected "max-out" date of November 7, 2016. **Exhibit M.**⁹
- (g) As of May 16, 2005, Carpenter's Offender Summary reflected a projected "max-out" date of November 7, 2016. **Exhibit N.**
- (h) As of January 17, 2008, Carpenter's Offender Summary reflected a projected "max-out" date of February 7, 2018. **Exhibit O.**¹⁰

⁶ The records do not reflect any disciplinary action or other adjudicated extension of Carpenter's projected "max-out" date from July 7, 2015 to April 4, 2017. Carpenter was not notified of a change in this calculation or basis therefore.

⁷ There is no explanation provided in the SCDC records for the acceleration in Carpenter's projected "max-out" date as compared to the date shown previously on January 2, 1995 records. Carpenter was not notified of the change in this calculation or basis therefore.

⁸ Again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on March 30, 1995 records. Carpenter was not notified of the change in this calculation or basis therefore.

⁹ There is no explanation provided in the SCDC records for the acceleration in Carpenter's projected "max-out" date as compared to the date shown previously on June 22, 1999 records. Carpenter was not notified of the change in this calculation or basis therefore.

¹⁰ Again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on May 16, 2005 records. Carpenter was not notified of the change in this calculation or basis therefore.

- (i) As of June 28, 2010, Carpenter's Offender Summary reflected a projected "max-out" date of May 20, 2016. **Exhibit P.**¹¹
 - (j) As of June 24, 2011, Carpenter's Offender Summary reflected the same sentence, with a projected "max-out" date of April 7, 2040. **Exhibit Q.**¹²
- 41. On September 12, 2011, after learning that his sentence had been increased by 24 years, Carpenter contacted SCDC classification officials and inquired into the matter.
 - 42. Carpenter received a written response on December 2, 2011 from an employee of SCDC that stated "Your sentence was modified to show as 25 yr. mandatory minimum day-for-day sentence on 6/24/11." **Exhibit R.**
 - 43. SCDC records reflect, however, that the day before the modification of Carpenter's sentence and increase by 24 years, an internal transaction was undertaken at SCDC to "give" Carpenter 57 days credit on his newly-modified sentence for time he had served prior to conviction, before transfer into the custody of SCDC. **Exhibit S.**
 - 44. Carpenter has repeatedly attempted to address the unilateral change in his sentence internally and the Department of Corrections has offered explanations for why his sentence was unilaterally increased without notice to Carpenter or an opportunity to be heard.
 - 45. Staff at SCDC has attempted to justify its change in Carpenter's sentence, which was made more than 20 years after he was taken into Department custody. **Exhibits T and U.**

¹¹ Again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on January 17, 2008 records. Carpenter was not notified of the change in this calculation or basis therefore.

¹² In response to record requests prior to the initiation of this suit, the Department of Corrections has not produced any Offender Summaries related to Carpenter dated for after 2011.

However, SCDC has never acknowledged the illegality of its change to Carpenter's sentence.

46. Based on the foregoing, Carpenter seeks a declaratory judgment finding and order declaring the following,

(a) SCDC's unilateral increase and modification to his sentence in 2011, which was done without notice to him and without an opportunity to be heard, was illegal and a violation of Carpenter's right to due process of law, and therefore was and is void;

(b) Carpenter's proper term of incarceration terminated on or about July 5, 2015;

(c) Carpenter should immediately be released from the custody of SCDC as his legitimate term of incarceration has long ago expired.

C. DISPARATE TREATMENT – EQUAL PROTECTION

47. Each and every allegation set forth previously is incorporated herein where relevant as if repeated verbatim.

48. Bobby G. Horne (hereafter "Bobby H.") was arrested in connection with the same course of events as was Carpenter, also pleaded guilty to a violation of S.C. Code Ann. Section 44-53-370(e). Bobby H's plea was to trafficking in cocaine, and was included as part of Case No. 90-GS-47-5002, the same case in which Carpenter pleaded guilty to trafficking in cocaine.

49. Bobby H. was also sentenced to 25 years under Section 44-53-370(c). His sentence for trafficking in cocaine was identical to Carpenter's.

50. On information and belief, Bobby H. was given sentence credits for good time served, pursuant to S.C. Code Section 24-13-210, earned work credits pursuant to S.C. Code Section 24-13-230, was eligible for parole, and was eligible for work release and release and supervised furlough.
51. Carpenter was given none of these credits, nor was he made eligible for work release, release on supervised furlough, or parole.
52. On information and belief, Bobby H. was released from the custody of SCDC on or about August 30, 2001 and placed on supervised furlough at that time. His certificate of supervised furlough indicated his 25-year sentence would "max-out" on March 1, 2002.
53. Carpenter has never been made eligible for supervised release, and received no reduction in his sentence for work credits, good time credits, work release, supervised furlough, or other administrative credits.
54. On information and belief, other inmates who have been in the custody of SCDC with 25-year sentences for trafficking in cocaine in violation of Section 44-53-370(e) have been granted work credits, good time credits, other administrative credits, have been released on supervised furlough or some combination thereof.
55. Carpenter has received none of those administrative credits or remedies on his sentence for violation of Section 44-53-370(e).
56. Carpenter and Bobby H. were treated differently by SCDC in terms of work credits earned, parole edibility, work release and supervised furlough, although their sentences on Case No. 90-GS-47-5002 were identical.

57. Disparate treatment regarding administrative credits, work release, supervised furlough and parole being made available to inmates who were adjudicated guilty (through plea or trial) of the same exact crime as Carpenter, and those given the exact same sentence as Carpenter, violates Carpenter's rights to equal protection of law.
58. Carpenter is informed and believes that his sentences on Case No. 90-GS-47-5001 and 90-GS-47-5002 should have been eligible for administrative credits, work release, supervised furlough, and parole, if he was afforded equitable treatment with those similarly situated to him, *i.e.*, persons sentenced to 25 years in prison for violation of 44-53-370(e).
59. Carpenter is informed and believes that he is entitled to a declaration of this Court that his sentence for violation of Section 44-53-370(e) on Case No. 90-GS-47-5002 should be carried out with all appropriate grant of credits to which others who were similar situated, including Bobby H., were eligible and did receive.

II. PETITION FOR WRIT OF HABEAS CORPUS

60. Each and every allegation set forth previously is incorporated herein where relevant as if repeated herein.
61. As demonstrated by the various illegal actions and jurisdictional issues, Carpenter is being detained illegally by SCDC and should be immediately released from custody.
62. Carpenter seeks the issuance of a writ ordering and requiring SCDC to immediately release Carpenter from its custody without restrictions of any kind and its records corrected to reflect that Carpenter's sentence has been served in full.

III. REQUEST TO EXPEDITE DUE TO EXTRAORDINARY CIRCUMSTANCES AND ILLEGAL DETENTION

63. Each and every allegation set forth previously is incorporated herein where relevant as if repeated verbatim.
64. Carpenter would show that the complaint and petition set forth herein present issues of law only, and therefore do not require any discovery nor any findings of fact.
65. Because he is being held in violation of his constitutional rights, Carpenter prays for an expedited hearing on the legal issues presented immediately following the filing and service of responsive pleadings.

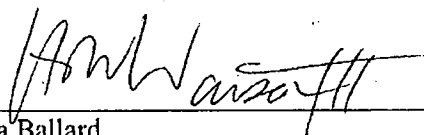
PRAYER FOR RELIEF

Having fully set forth the grounds for the relief sought herein, Carpenter prays for an order:

- (a) Granting him a writ of habeas corpus and requiring the Defendant SCDC to immediately release him from custody and reflect his sentence as having been fully served.
- (b) Declaring and finding that the sentencing judge lacked subject matter jurisdiction to retain jurisdiction on sentencing for Case No. 90-GS-47-5002 after the adjournment *sine die* of the term of court at which the sentence for Case No. 90-GS-47-5001 was imposed on June 4, 1990.
- (c) Declaring and finding that SCDC violated Carpenter's rights to due process of law by unilaterally modifying his sentence more than 21 years after he was placed in the custody of SCDC, without notice to Carpenter and in violation of his substantive and procedural rights to due process of law.

- (d) Declaring and finding that SCDC violated Carpenter's rights to equal protection of law by denying him the administrative credits and other release programs which were granted to Bobby H. and to others similarly situated and ordering a correction to his sentence(s) accordingly.
- (e) For the costs of this action and attorney's fees as permitted by law¹³; and
- (f) For such other relief as the court deems just and proper.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

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desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

November 18, 2016

¹³ Carpenter reserves the right to seek statutory attorney's fees in a timely fashion following the conclusion of this action.



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
STATE OF SOUTH CAROLINA)

IN THE COURT OF
GENERAL SESSIONS FOR
THE FOURTH JUDICIAL CIRCUIT

CASE NO. 90GS4705001
90GS4705002

V.

PLEA AGREEMENT

CHARLES EUGENE CARPENTER
a/k/a "FIREBALL"

7th RC SK
AGREEMENT made this 4th day of April, 1990, between and among the State of South Carolina, as represented by Assistant Attorney General Sean Kittrell; the Defendant, Charles Eugene Carpenter a/k/a "Fireball", and his attorney, Lionel Lofton, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant, Charles Eugene Carpenter a/k/a "Fireball", agrees to plead guilty to ^{two} ~~four~~ counts of violating section 44-53-370(e), 1976 Code of Laws of South Carolina, as amended, (e.g. trafficking in marijuana and trafficking in cocaine). Sentencing will be done pursuant to Section 44-53-370(e)(2)(e) with regard to Count One of Indictment 90GS4705002, ~~Section 44-53-370(e)(2)(d) with regard to Count Two of that same Indictment~~; Section 44-53-370(e)(1)(d) with regard to Count One of Indictment 90GS4705001; and ~~Section 44-53-370(e)(1)(b) with regard to Count Two of Indictment 90GS4705001~~. The State will recommend that the Court impose a sentence of 2.5 years under ~~Section 44-53-370(e)(1)(b)~~.
2. The Defendant, Charles Eugene Carpenter a/k/a "Fireball", agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina and local, state and federal law enforcement agents in their investigation of the importation,

ROA 0069

possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the State, subject to prosecution for perjury for not testifying truthfully. The Defendant must be completely honest. The Defendant understands that his obligation is absolute; whether it helps the prosecution, or hurts the prosecution, and whether it helps or hurts other individuals, either indicted or unindicted. The failure of the Defendant to be truthful or to cooperate at any stage can cause the State's obligations under this Agreement to become null and void. Further, it is expressly agreed that if the State's obligations under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony

provided by the Defendant in the prosecution of the Defendant for all charges; and (5) the State may advise the South Carolina Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

3. The Defendant, Charles Eugene Carpenter a/k/a "Fireball", understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the Attorney General, in portions to be determined by the Attorney General. The assets so surrendered will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement related organizations in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement related organizations in South Carolina all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are

the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement related organizations in South Carolina, in portions to be determined by the Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances.

4. The Defendant, Charles Eugene Carpenter a/k/a "Fireball", further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This plea agreement is expressly contingent upon successful completion, to the State's satisfaction, of the polygraph examination(s).

5. The Attorneys for the State agree not to prosecute the Defendant, Charles Eugene Carpenter a/k/a "Fireball", for other offenses committed prior to the date of this Agreement in the State of South Carolina which are of the same or similar character as those cited herein, or for other offenses committed prior to the date of this Agreement in the State of South Carolina, which are based on the same act or transaction or constitute a part of a

common scheme or plan as those cited herein. The Attorneys for the State also agree not to indict Sharon Coleman, Vernon Carpenter and Roger Carpenter for any offenses which have been uncovered as a result of the investigation of this case.

6. ~~The parties hereto understand that any request by the Defendant, Charles Eugene Carpenter a/k/a "Fireball", for a particular sentence shall not be binding upon the Court, and that the Defendant has no right to withdraw his plea regardless of the sentence imposed by the Court.~~

7. The Attorneys for the State agree to recommend that any sentences of incarceration the Defendant, Charles Eugene Carpenter a/k/a "Fireball", receives as a result of these pleas shall be concurrent terms of incarceration, ~~with the understanding by the parties hereto that this recommendation is not binding upon the Court, and that the Defendant has no right to withdraw his plea, regardless of the sentence imposed by the Court;~~ with the further understanding that should the Defendant fail to fulfill the terms of this agreement, then the State may recommend that any sentence be run consecutive, each Count to the other.

8. The Attorneys for the State reserve the right to speak to the Court at the time of sentencing and reserve the right to recommend a sentence of incarceration.

9. The Attorneys for the Government agree to recommend to any United States Attorney or other State or local prosecutor that the Defendant, Charles Eugene Carpenter a/k/a "Fireball", not be prosecuted for any similar crimes occurring in the District of

South Carolina or any other District or this or other states prior to the date of this Agreement, so long as the Defendant, Charles Eugene Carpenter a/k/a "Fireball", continues to cooperate with any law enforcement agency interested in the information he possesses.

10. The Attorneys for the State reserve the right to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

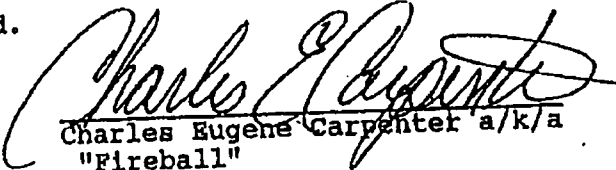
11. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

12. The Defendant, Charles Eugene Carpenter a/k/a "Fireball", understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws ~~and complying with the terms and conditions of any bond executed in this case.~~

13. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; ^{except as to the marks placed on the record in open Co.} and that any and all other promises, ^{April 17,} representations and statements, whether made prior to or after this Agreement, are null and void.

DATE

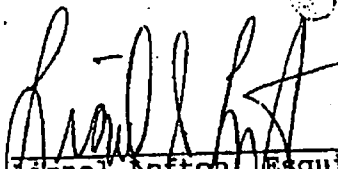
4/6/90


Charles Eugene Carpenter a/k/a
"Fireball"
Defendant

ROA 0075

DATE

4/2/90

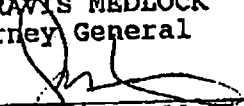

Lionel Lofton, Esquire
Attorney for the Defendant

T. TRAVIS MEDLOCK
Attorney General

DATE

Nov 7, 1990

By:


Sean Kittrell
Assistant Attorney General
State Grand Jury Section

ROA 0075

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHESTERFIELD

COURT OF GENERAL SESSIONS

3
4 THE STATE

5 -vs-

6 CHARLES EUGENE CARPENTER, a/k/a
7 "FIREBALL"

:
:
: TRANSCRIPT OF RECORD
: (Guilty Plea)
:
:
:

8
9 April 7, 1990
Bennettsville, South Carolina

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11
12 B E F O R E:

13 HONORABLE EDWARD B. COTTINGHAM, Judge.
14
15

16 A P P E A R A N C E S:

17 A. SEAN KITTRELL, Deputy Attorney General
18 State Grand Jury Section
Appearing for the State

19 LIONEL S. LOFTON, ESQUIRE
20 Appearing for the Defendant
21
22
23

24 DEBORAH G. MORRIS
25 C: L Court Reporter

1 MR. KITTRELL: Your Honor, this is The State of South
2 Carolina vs. Charles Eugene Carpenter, also known as "Fireball."
3 This is in reference to Indictment No. 90-GS-47-05001 and
4 90-GS-47-05002.

5 Your Honor, the Defendant is entering a plea of guilty.

6 THE COURT: One minute. All right, go ahead.

7 MR. KITTRELL: The Defendant is entering a plea of
8 guilty as to two of the counts, i.e., Count One of each
9 separate indictment.

10 THE COURT: All right, Count One of the 01 indictment
11 says "conspiracy to traffic in marijuana"?

12 MR. KITTRELL: Yes, sir, it is a trafficking charge
13 under Section 44-53-370(e)(2)(e). That is under the mari-
14 juana indictment, Your Honor.

15 THE COURT: Under Count One I am showing as a conspiracy
16 trafficking in marijuana.

17 MR. KITTRELL: No, sir, (e)(1)(d), I'm sorry.

18 THE COURT: Am I right?

19 MR. LOFTON: That's correct, Your Honor. That is
20 under the 01 indictment.

21 THE COURT: All right, sir, now, go ahead.

22 MR. KITTRELL: And he is also pleading guilty to Count
23 One of the second indictment, which is 90-GS-47-05002.

24 THE COURT: All right, sir.

25 MR. KITTRELL: Your Honor, a plea agreement has been

1 entered into and signed by the Defendant, his attorney and
2 myself on behalf of the State.

3 Your Honor, the agreement sets out the terms of this
4 plea and the State will recommend that the Court impose a
5 sentence of 25 years and that the sentence be as to each
6 count and that each count be run concurrent each to the
7 other.

8 At the sentencing, Your Honor, the State will dismiss
9 the remaining two counts that are outstanding against this
10 Defendant, which is Count Two of each indictment.

11 THE COURT: Your recommendation, then, under the plea
12 agreement is 25 years upon each count, concurrent.

13 MR. KITTRELL: Yes, sir, Your Honor. Of course, if
14 there are any other -- We will do concurrent as to other
15 charges which the Defendant has been found guilty of,
16 specifically speaking of a North Carolina conviction.

17 MR. LOFTON: What we are saying, Your Honor, as a plea
18 bargain that the sentence will be deferred until he is
19 sentenced in North Carolina on the case he has been convicted
20 on up there, and that when the sentence is imposed here the
21 recommendation will be that the time here, the 25 years, will
22 also be concurrent with the North Carolina case.

23 THE COURT: Is that your understanding of the recommen-
24 dation?

25 MR. KITTRELL: Yes, sir.

1 THE COURT: All right, sir.

2 MR. KITTRELL: Your Honor, the plea agreement sets
3 out the terms that were discussed. The Defendant is to
4 fully and truthfully cooperate with law enforcement agents
5 of the State of South Carolina to help them further investi-
6 gate the trafficking of illegal substances and distribution
7 of illegal activities, the distribution of illegal drugs.
8 There is supposed to be complete cooperation. Paragraph (2)
9 of the agreement sets out the terms of the Defendant's
10 cooperation. This also requires the Defendant be available
11 and truthfully testify before any grand jury or any trials
12 or any proceedings, be it civil or criminal. The Defendant
13 has to perform this as an absolute obligation. If he fails
14 to do so, then the plea agreement is revoked.

15 Your Honor, the Defendant also agrees and has agreed
16 and understands that he is to forfeit all assets which were
17 obtained or acquired as a result of illegal trafficking in
18 drugs. These are to be surrendered to SLED and/or other
19 law enforcement organizations in South Carolina. Of course,
20 these assets will be disposed of pursuant to the forfeiture
21 statute.

22 THE COURT: All right, sir.

23 MR. KITTRELL: That is contained in Paragraph (3), Your
24 Honor, and there are many more divisions there, but that is
25 the essence of that.

PENGAD/INDY. MURKEL IN 47302

SP-2094

1 Your Honor, the Defendant also agrees to submit to
2 polygraph examinations. He must obviously successfully
3 complete those examinations, if given. My understanding
4 is that they will be given. The Defendant must successfully
5 complete the examinations in order to fulfill his obligations
6 under this agreement.

7 Your Honor, the State will not prosecute Mr. Carpenter
8 for other offenses which were submitted prior to this date,
9 the date of this agreement, and which have occurred in the
10 time frame noted in Counts One of both indictments.

11 THE COURT: Your agreement doesn't relate to any
12 possible other pending federal charge, you would have no
13 jurisdiction with regard to that.

14 MR. KITTRELL: No, Your Honor, but I would agree to
15 recommend to the United States Attorney or other prosecuting
16 officers in other jurisdictions that this agreement encompass
17 all charges which may be brought against him.

18 THE COURT: Everybody understand, though, that they nor
19 you or this Court are bound by what some other authority
20 might do, you understand that?

21 MR. LOFTON: Yes, Your Honor, we understand he has no
22 jurisdiction over the federal authorities.

23 THE COURT: Yes, sir. All right, is there any further
24 matters in there?

25 MR. KITTRELL: Your Honor, the rest of the agreement

1 is contained in the document itself. I think there may be
2 some other matters which are going to be placed on the
3 record or have been placed on the record, and those are
4 merged into this agreement as well.

5 THE COURT: We will go into the details of that in a
6 moment. Now, Mr. Lofton, you, of course, represent this
7 Defendant?

8 MR. LOFTON: That's correct, Your Honor.

9 THE COURT: And have represented him throughout these
10 proceedings?

11 MR. LOFTON: That's correct.

12 THE COURT: And are his retained counsel?

13 MR. LOFTON: That's correct.

14 THE COURT: I say this, I don't ask you to agree to
15 it, but you are an eminent member of the Charleston County
16 Bar and have practiced in this state for a number of years
17 and a former Assistant United States District Attorney,
18 were you not?

19 MR. LOFTON: That's correct, Your Honor.

20 THE COURT: I just want the record to reflect your
21 capabilities in the representation of Mr. Carpenter. This
22 agreement I hold in my hand designated as a plea agreement
23 purports to be signed by you, as his attorney, and him.
24 Have you executed this agreement?

25 MR. LOFTON: Yes, sir, I have, and so has he, Your

SP-2084 PENGAB/INOV. MURCIE, IN 47302

1 Honor.

2 THE COURT: Have you explained this agreement to him?

3 MR. LOFTON: We have gone over it in toto.

4 THE COURT: And he has had an opportunity to read it
5 and to ask you any questions about it?

6 MR. LOFTON: That's correct.

7 THE COURT: As his attorney, can you tell me that this
8 agreement is freely and voluntarily entered into?

9 MR. LOFTON: That's correct, Your Honor.

10 THE COURT: Without any coercion or duress of any
11 kind?

12 MR. LOFTON: That's correct, Your Honor.

13 THE COURT: Without any other promises other than those
14 as are contained in this written agreement?

15 MR. LOFTON: That's correct, Your Honor. Let me
16 clarify one thing. This is what Mr. Kittrell alluded to
17 a moment ago.

18 THE COURT: All right, let's do that, please.

19 MR. LOFTON: Even though this is not an agreement
20 between Mr. Kittrell and myself, as part of the inducement
21 for Mr. Carpenter to enter a plea of guilty, I did certain
22 things concerning other charges that I have advised him of
23 that I would like to just place on the record so the record
24 will be complete because he was aware of those at the time
25 he signed that plea agreement.

1 THE COURT: I don't know exactly what you are referring
2 to, but you can put it on the record and I will respond, if
3 necessary.

4 MR. LOFTON: There is a pending charge in the United
5 States District Court for the District of South Carolina,
6 Florence Division, dealing with a firearm, which the United
7 States Attorney has agreed to dismiss provided Mr. Carpenter
8 complies with the terms and conditions of his plea agreement
9 in this court.

10 Additionally, there is a pending charge in Richland
11 County, which the Solicitor there has agreed to dismiss
12 provided Mr. Carpenter complies with the terms and conditions.

13 THE COURT: I want to make sure we don't have a condi-
14 tional plea here. You are just saying that he has entered
15 into it and you've got these things out there, but I am not
16 hearing a conditional plea, now.

17 MR. LOFTON: It is not a conditional plea, but, Your
18 Honor, from the standpoint of inducements I think it is
19 important that these were considerations that were given to
20 him when he entered his plea.

21 THE COURT: As long as it is not a conditional plea.

22 MR. LOFTON: No, sir, it is not a conditional plea.

23 MR. KITTRELL: If I could state one thing for the
24 record. My understanding is that Mr. Lofton has been talking
25 to other law enforcement agencies. That has nothing to do

1 with these charges here. I have no objection to those
2 activities which he has undertaken. I do not mind him dis-
3 cussing with other law enforcement agencies pending charges
4 against Mr. Carpenter. Again, whether he achieves that
5 result or not has nothing to do with this agreement, and
6 that is my understanding.

7 THE COURT: I am taking the plea on that basis. The
8 plea agreement has nothing to do with whether you are success-
9 ful or not, you are just reciting this to show that those
10 efforts are also pending out there.

11 MR. LOFTON: That's correct, Your Honor, but those are
12 things that he took into consideration to enter this plea,
13 and that is important.

14 THE COURT: I understand. But he understands that this
15 Court can't guarantee that, nor does the Attorney General's
16 Office.

17 MR. LOFTON: He understands that.

18 THE COURT: Do you understand that, Mr. Carpenter?

19 MR. CARPENTER: Yes, sir, I do.

20 THE COURT: All right.

21 MR. LOFTON: And then the final thing, of course, the
22 Solicitor is here, Your Honor, there are burglary and kid-
23 napping charges pending here in Malboro County, which the
24 Solicitor agreed to dismiss.

25 THE COURT: Well, he is standing here and he can

1 certainly say that as to that.

2 MR. McBRIDE: That's correct, Your Honor.

3 THE COURT: There is no question about it, he has
4 stated that, but as to the other I am accepting that as
5 information only so that the record will reflect that you,
6 as his attorney, has explained to your client that you've
7 got these actions out there. You may or may not be success-
8 ful.

9 MR. LOFTON: I understand, Your Honor.

10 THE COURT: And as long as he understands, that is
11 fine. Now, Mr. Carpenter?

12 MR. CARPENTER: Yes, sir.

13 THE COURT: Your attorney tells me that you freely
14 and voluntarily entered into this plea agreement?

15 MR. CARPENTER: Yes, sir.

16 THE COURT: He tells me that you understand it, is
17 that correct?

18 MR. CARPENTER: (Nods affirmatively.)

19 THE COURT: Now, I tell you that this Court will abide
20 by this plea agreement. I tell you that upon the record.

21 MR. CARPENTER: Yes, sir.

22 THE COURT: But I also tell you upon the record, and
23 let there be no question about it, that this Court will fully
24 expect you in every---

25 MR. CARPENTER: Yes, sir.

PENGAD/INDY. MUNCIE. IN 47302

SP-2094

1 THE COURT: ---detail and in every particular to abide
2 by that which you have agreed to do.

3 MR. CARPENTER: Yes, sir.

4 THE COURT: If I conclude upon proper presentation
5 that you have not done so, then this plea agreement to you
6 and to me is void and of no effect. Do you understand that?

7 MR. CARPENTER: Yes, sir, I do.

8 THE COURT: I am sure you have explained that to him.

9 MR. LOFTON: We have been over that fully, yes, Your
10 Honor.

11 THE COURT: Now, you are pleading to those counts in
12 these indictments as have been enumerated by the representa-
13 tive of the Attorney General's Office, do you understand
14 that?

15 MR. CARPENTER: Yes, sir, I do.

16 THE COURT: Your attorney, for the record, has stated
17 that he has certain ongoing negotiations relative to other
18 charges that he talked to you about. Now, I want to tell
19 you, though, that the Attorney General nor myself has any
20 authority over those matters. Do you understand that?

21 MR. CARPENTER: Yes, sir, I do.

22 THE COURT: And that is something that your attorney
23 needs to work out, if he can, but I am not dealing with
24 that. I have no authority to deal with that. I am not
25 accepting a conditional plea with regards to what happens

1 there. I would not want you to think that. In the event
2 one of those eventualities do not occur and you come back
3 and say, "Well, Judge, I wouldn't have pled at all had I
4 known that wasn't going to happen."

5 MR. CARPENTER: Yes, sir, I understand.

6 THE COURT: He is just saying to you that he's got that
7 hoping that he can work it out. It has nothing to do with
8 my and your understanding here, though.

9 MR. CARPENTER: Yes, sir.

10 THE COURT: And you have explained that to him, Mr.
11 Lofton?

12 MR. LOFTON: Yes, sir, I explained it to him.

13 THE COURT: All right, sir. And are you satisfied
14 that the record is clear with regards to that, Solicitor?

15 MR. KITTRELL: Yes, Your Honor.

16 THE COURT: Now, Mr. Lofton, in your opinion does
17 your client now understand the charges to which he pleads,
18 the possible punishment and the constitutional rights?

19 MR. LOFTON: Yes, he does, Your Honor.

20 THE COURT: How does he indicate to you that he desires
21 to plead to Count One of the first indictment?

22 MR. LOFTON: Guilty, Your Honor.

23 THE COURT: And how does he indicate that he desires
24 to plead to Count One of the second indictment?

25 MR. LOFTON: Guilty also.

PENGAD/INDY. MUNIC. IN 47302

SF-2004

1 THE COURT: And does he understand the meaning and
2 the efficacy of the plea that he has entered into with
3 regards to sentence?

4 MR. LOFTON: Yes, Your Honor.

5 THE COURT: And as I understand it the understanding
6 is it is 25 years concurrent?

7 MR. LOFTON: That's correct.

8 THE COURT: Now, I want to make sure that there is no
9 other considerations out there that he thinks are out there
10 that are not out there.

11 MR. LOFTON: That is the considerations, Your Honor.

12 THE COURT: There is none other, all right. Now, Mr.
13 Carpenter, how old are you, please?

14 MR. CARPENTER: Thirty-six.

15 THE COURT: What education do you have?

16 MR. CARPENTER: Two years of college.

17 THE COURT: Two years of college. All right, sir.
18 Then you heard your attorney state that you have been advised
19 of the charges contained in these two counts to which you
20 tender a plea, is that correct?

21 MR. CARPENTER: Yes, sir, that's correct.

22 THE COURT: Now, are you guilty of these charges?

23 MR. CARPENTER: Yes, sir.

24 THE COURT: And are these pleas freely and voluntarily
25 entered into?

1 MR. CARPENTER: Yes, sir.

2 THE COURT: Without force, duress or coercion?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: Now, Mr. Carpenter, you are well aware,
5 of course, that these charges were to be tried by a jury
6 of your peers beginning Monday morning in Chesterfield,
7 South Carolina. Do you understand that?

8 MR. CARPENTER: Yes, sir.

9 THE COURT: You still have that absolute right to that
10 trial by that jury. Do you understand that?

11 MR. CARPENTER: I understand that.

12 THE COURT: If we convene that jury on Monday morning,
13 you and your attorney would have an opportunity to voir dire,
14 that is, to question the jury as to assure yourselves of
15 their impartiality. Do you understand that?

16 MR. CARPENTER: Yes, sir.

17 THE COURT: If a jury was convened, I would instruct
18 them that you and everyone else are presumed innocent, and
19 that presumption of innocence remains with you throughout
20 the trial and until the jury has upon evidence to their
21 satisfaction beyond a reasonable doubt unanimously found
22 you guilty. Do you understand that?

23 MR. CARPENTER: Yes, sir.

24 THE COURT: If you chose to testify, you would have
25 that absolute right. Do you understand that?

SP-2094 PENGAD/MOY. MUNCIE, IN 47501

1 MR. CARPENTER: Yes, sir.

2 THE COURT: If you chose to remain silent, I would
3 explain to the jury that you are presumed innocent, you
4 don't have to prove a thing, the burden is on the State.
5 I would explain to the jury that your silence could not and
6 must not be used against you. Do you understand that?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: I wanted this record to abundantly reflect
9 that you are absolutely entitled to trial by jury and we
10 will give you one starting Monday morning at 10 a.m. in
11 Chesterfield, South Carolina. Do you understand that?

12 MR. CARPENTER: Yes, sir.

13 THE COURT: You are represented by a distinguished
14 attorney of the South Carolina Bar with many years experience
15 in matters of these kind. Now, I want to know, he is
16 your retained counsel?

17 MR. CARPENTER: Yes, sir.

18 THE COURT: Has been your retained counsel for what,
19 two or three months or more?

20 MR. CARPENTER: Yes, sir.

21 MR. LOFTON: Since early December or late November,
22 Your Honor.

23 THE COURT: And you have been in custody, as I under-
24 stand it?

25 MR. CARPENTER: Yes, sir.

PENGADIMOV, MUNCIE, IN 47502

SF-2094

1 THE COURT: I have tried to make him available to you
2 at all times. Has that been done?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: Has he made available to you for your
5 perusal the various documentation that the State had,
6 including the grand jury reports?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: Have you had an ample opportunity to go
9 over the purported evidence against you in these various
10 charges?

11 MR. CARPENTER: Yes, sir.

12 THE COURT: Have you had a full and complete opportunity
13 to discuss all of these matters with Mr. Lofton?

14 MR. CARPENTER: Yes, sir.

15 THE COURT: Is there anything else that you wish Mr.
16 Lofton to do or to consult with you before I proceed in
17 the matter?

18 MR. CARPENTER: No, sir.

19 THE COURT: Are you satisfied with his services?

20 MR. CARPENTER: Absolutely.

21 THE COURT: Now, I can promise you, nearly, that
22 within the next several years somebody in the penal system
23 is going to suggest to you that you file a post conviction
24 relief wherein you are going to allege that he was totally
25 inept in some particular. I can assure you, reasonably

1 certain that that is going to happen. Now, if there is
2 any area that you think this lawyer is deficient in, I would
3 like to hear it now so I can discuss it with you.

4 MR. CARPENTER: No, sir, I can't think of nothing now.

5 THE COURT: You are telling me you are satisfied with
6 his services?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: He has made himself available to you,
9 even though you have been incarcerated?

10 MR. CARPENTER: Yes, sir.

11 THE COURT: Now, Mr. Carpenter, I want to make sure
12 that you have no complaints about anything anybody did to
13 you or failed to do for you, including the law enforcement
14 officers of the county, the state involved, or what not.
15 Has anybody mistreated you in any way? I want to know about
16 it right now.

17 MR. CARPENTER: Yes, sir, I understand.

18 THE COURT: Sir?

19 MR. CARPENTER: Yes, sir.

20 THE COURT: Now, are you today under the influence of
21 alcohol or drugs or mind altering drugs, liquor of any kind?

22 MR. CARPENTER: No, sir.

23 THE COURT: Is your mind free and clear? Do you under-
24 stand what we are doing?

25 MR. CARPENTER: Yes, sir.

PENGAD/INDY. MUNCIE. IN 47502

SP-2084

1 THE COURT: You understand the nature of the charges
2 against you?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: You understand the consequences of your
5 plea?

6 MR. CARPENTER: Yes, sir.

7 THE COURT: You fully understand your constitutional
8 rights of trial by jury?

9 MR. CARPENTER: Yes, sir.

10 THE COURT: And you are telling me that you desire to
11 go forward, that you have discussed it with your lawyer,
12 you are satisfied with his services?

13 MR. CARPENTER: Yes, sir.

14 THE COURT: I want to make sure too, Mr. Carpenter,
15 that your plea is freely and voluntarily entered into.

16 MR. CARPENTER: Yes, sir.

17 THE COURT: I want to make absolutely sure now that
18 no one whatsoever has coerced you or threatened you in any
19 way to get you to plead guilty.

20 MR. CARPENTER: Yes, sir.

21 THE COURT: Sir?

22 MR. CARPENTER: No, sir, I mean, free.

23 THE COURT: There are no threats out there or---

24 MR. CARPENTER: No, sir.

25 THE COURT: Is there anything further you wish to say

PENGADJINDY, MUNCIE, IN 47302

BP-3084

1 at this time before I accept your plea?

2 MR. CARPENTER: No, sir.

3 THE COURT: Mr. Carpenter, having discussed the matter
4 with you and your attorney and having had now an opportunity
5 to review your demeanor and your quite candid responses to
6 my inquiry, I would conclude beyond a reasonable doubt that
7 you have had the advice and counsel of a competent attorney
8 with whom you are satisfied. I find beyond any doubt that
9 he has represented you well, as he always would, that you
10 have had an ample opportunity to talk to him to prepare your
11 case. Your responses indicate to me clearly that your actions
12 in, one, the plea agreement, and in pleading guilty, is
13 freely and voluntarily made. There is no suggestion whatso-
14 ever of any force or threat as against you. I find that
15 you have no complaints against the law enforcement officers,
16 having availed you of the opportunity to express them, and
17 I do so again. Clearly you are an intelligent young man
18 with two years of college. You fully understand your consti-
19 tutional rights of trial by jury and otherwise.

20 MR. CARPENTER: Yes, sir.

21 THE COURT: I find that your decision is freely and
22 voluntarily made, that it is your decision, and I find
23 beyond any reasonable doubt that it is proper, then, that
24 I accept the plea as tendered to the Court by you through
25 your attorney, and I do so at this time, making the plea

1 agreement a part and parcel of this record.

2 MR. KITTRELL: If I could also ask that the Defendant
3 understand that this is a mandatory term of imprisonment,
4 that it is a mandatory minimum, the sentence cannot be
5 suspended, probation can't be granted and it is a sentence
6 that does not have any eligibility for parole until the
7 passage of 25 years.

8 THE COURT: I am sure Mr. Lofton has explained that
9 to him.

10 MR. LOFTON: We went over that in great detail and he
11 fully understands the ramifications.

12 THE COURT: Yes, sir, and he has indicated to me that
13 he understands it, and I have told him, and I do so upon
14 this record, that I am going to abide by the plea agreement.
15 He is entitled to that too, and I will do that. You don't
16 have any problems with that, I take it, Mr. Kittrell?

17 MR. KITTRELL: Not at all, Your Honor.

18 THE COURT: I didn't think you did. No, sir, he has
19 entered into it in good faith and his lawyer has, and I
20 am going to accept it.

21 MR. CARPENTER: Thank you.

22 (WHEREUPON, the hearing was adjourned.)

23

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

25

PENGAD/NOV. MUNCIE, IN 47502

SF-2004

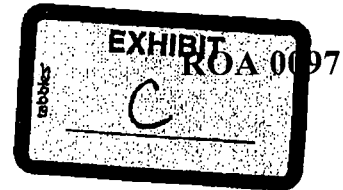
CERTIFICATE

I, the undersigned Deborah G. Morris, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the guilty plea of the captioned cause, relative to appeal, in the Criminal Court for Chesterfield County, South Carolina, on the 7th day(s) of April, 1990.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 24, 1990.
Deborah G. Morris
Court Reporter

SF-2084 PENCAD/INDY. MUNCIE, IN 47303



1 STATE OF SOUTH CAROLINA

2 COUNTY OF DILLON

IN THE COURT OF GENERAL SESSIONS

3
4 STATE)

5 vs.)

6 CHARLES EUGENE CARPENTER)

TRANSCRIPT OF RECORD

90-GS-47-05001

90-GS-47-05002

7
8 June 4, 1990

9 Dillon, South Carolina

10 BEFORE: HONORABLE EDWARD B. COTTINGHAM

11
12 APPEARANCES:

13 SEAN KITTRELL
14 ASSISTANT ATTORNEY GENERAL
15 STATE GRAND JURY SECTION
16 ATTORNEY FOR THE STATE

17
18 LIONEL LOFTON, ESQUIRE
19 ATTORNEY FOR DEFENDANT

20 TIMOTHY F. ROGERS, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT

22 MICHAEL COX, ESQUIRE
23 ATTORNEY FOR THE DEFENDANT

24 Patricia S. Dial
25 Court Reporter

ROA 0097

I N D E X

1		
2	SENTENCING HEARING	3
3	SENTENCE OF THE COURT	21
4	CERTIFICATE OF REPORTER	28

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1 (The following hearing is captioned on Page 1 of this
2 transcript:)

3 MR. KITTRELL: Charles Eugene Carpenter.

4 THE COURT: Pursuant to my decision in chambers Mr.
5 Lofton will continue in representation accompanied by his
6 retained Counsel, Mr. Rogers and Mr. Cox.

7 Solicitor, I will be glad to hear from you. Prior to
8 doing so I am making a part of this record the plea agreement
9 previously entered into by Mr. Carpenter. In addition to
10 that, the proceedings previously held in Marlboro County
11 wherein his decision to plead guilty was determined to be
12 freely and voluntarily made is also a part of these proceedings.

13 All right, Mr. Kittrell.

14 MR. KITTRELL: Your Honor, do you wish to hear about
15 the plea agreement first or can we get into a little bit
16 about the investigation and background, if I may.

17 THE COURT: Proceed in a manner suitable to you, sir.

18 MR. KITTRELL: Your Honor, this case has been under
19 investigation for more than three years. The Defendant has
20 been known to authorities both in North Carolina and South
21 Carolina as being a drug dealer and as a dangerous individual.

22 Three years ago this Defendant moved into Marlboro County
23 and bought a cabin. After a period of time, Your Honor, he
24 spent a substantial amount of money fixing it up and turning
25 it into what the authorities called "the compound."

1 In a sense the police believed it to be a fortified
2 residence with security fences and the like. Your Honor,
3 after the Defendant moved into the area there was an
4 increase in violence in the County and in surrounding areas.

5 The street talk was that the Defendant was involved in drug
6 trafficking activities. Because of this and because of the
7 fear of the community with regard to Mr. Carpenter Chief
8 Stewart and Sheriff Foley decided to initiate an investigation
9 as to this Defendant and assigned Fred Knight to work full-
10 time on the investigation. The investigation continued at
11 least for a full year, but nothing really resulted from that
12 investigation.

13 Your Honor, they worked in conjunction with North
14 Carolina authorities where this Defendant was from and where
15 his family also was from. As I said, there was an increase
16 of violence in the County, rumors of shootings and kidnappings
17 as well. After a period of time Sheriff Foley and Chief
18 Stewart went to the State Grand Jury, which was just then
19 beginning its operations. At that time the State Grand Jury
20 began its investigation of the Defendant and targeted Mr.
21 Carpenter as the specific head of the organization.

22 Because of the information developed by authorities in
23 North Carolina and because of the work of the Sheriff and
24 because of the RAID Team's activities Mr. Carpenter was
25 regarded as the lynchpin or the kingpin of a loose-knit

1 drug distribution network. This network would distribute
2 both marijuana and cocaine throughout North and South
3 Carolina.

4 The amounts of cocaine were in the multi-kilogram range
5 and with regards to marijuana was in excess of thousands of
6 pounds. The Defendant was investigated by the Grand Jury in
7 essence in a two-prong fashion. At the top end they were
8 trying to investigate through confidential informants and
9 the like this Defendant. They were trying to target
10 individuals they regarded in essence as his lieutenants. To
11 that end they were investigating Kenny Ray Taylor and Bobby
12 Gene Horne.

13 On the other end the RAID Team also expended a great
14 deal of effort on the investigation. They sent undercover
15 agents from the RAID Team into that community and that area.
16 Through the course of time the special agents made numerous
17 buys of cocaine and marijuana and linked that purchasing of
18 drugs to Mr. Carpenter. Mr. Carpenter would obtain the
19 cocaine or marijuana from sources outside of South Carolina
20 and then distribute it to multiple individuals both in North
21 Carolina and South Carolina.

22 One of his prime individuals who acted as his lieutenant
23 and who distributed a large number of drugs was, as I
24 mentioned earlier, Bobby Gene Horne. A lot of the charges
25 that arise against the Defendants who are here today arise

1 out of undercover buys. There Defendants' linkages flow
2 more to Bobby Gene Horne than directly to Mr. Carpenter.
3 Mr. Carpenter is very intelligent and insulated himself and
4 his activities from other individuals. Indeed, he would
5 keep his sources separate and the knowledge of them separate
6 from each other. Finally, however, after a period of time
7 in the investigation that initiated the arrests some
8 Defendants began cooperating.

9 Through that cooperation the case was restructured and
10 additional Indictments or Counts were brought against this
11 Defendant. Initially, he was charged with one 25 year
12 offense without parole. Ultimately, two Indictments were
13 sought by the Grand Jury and returned as True Billed,
14 charging him in two separate conspiracies, as mentioned.

15 Your Honor, the Defendant had several sources of
16 cocaine. He would go down to Florida often and pick up
17 multi-kilos. We had information given us that it was at
18 least over a period of time over 20 kilograms. With regard
19 to the marijuana, Your Honor, he would essentially have at
20 least three sources that we know about. There were probably
21 more. He'd go to Atlanta and obtain marijuana from a woman
22 named Darlene Boyd. From another Co-Defendant named Jesse
23 James or Joseph Earl Smith he would obtain marijuana from
24 Texas. Finally, he had an associate named Peewee Freeman,
25 who was also indicted in this case. Mr. Freeman was a long-

1 distance truck driver and he had rigged his cab to hold a
2 thousand pounds of marijuana at a trip. Over a period of
3 time Mr. Freeman would drive to Texas carrying loads
4 pursuant to his job for Cooper Trucking and on the return
5 stop by El Paso and pick up pounds of marijuana. He'd pick
6 up pounds in excess of a hundred and up to a thousand.

7 Based on a very conservative estimate the Defendant,
8 Mr. Carpenter, trafficked well in excess of 8,000 pounds of
9 marijuana. Your Honor, the Defendant has a record of
10 convictions both in this state and other states. Recently
11 he was convicted in Federal Court of being in violation of
12 Federal firearms laws and has been sentenced there.

13 THE COURT: What sentence is he currently serving?

14 MR. KITTRELL: Your Honor, I believe it is a 28 month
15 sentence under the guidelines.

16 DEFENDANT: 24.

17 MR. KITTRELL: 24, I'm sorry.

18 MR. KITTRELL: There are several other firearms
19 violations that he's been convicted of.

20 THE COURT: Any prior drug violations?

21 MR. KITTRELL: Yes, Your Honor, he's been convicted of
22 possession of cocaine with intent to distribute.

23 THE COURT: I want his prior record now upon this
24 record.

25 MR. KITTRELL: In 1984, Your Honor, he was sentenced to

1 possession of a firearm by a convicted felon. Your Honor,
2 in 1978 he was convicted of intimidating a State's witness
3 and sentenced to jail time.

4 THE COURT: Convicted of intimidating a State's
5 witness?

6 MR. KITTRELL: Yes, Your Honor. He was convicted of
7 possession of marijuana with intent to manufacture and
8 sentenced to jail time. 4-13-87 he was convicted in Florida
9 of possession of cocaine. I 1978, as I mentioned, he was
10 convicted of intimidating a State's witness in North
11 Carolina. In 1981 he was convicted of felony possession of
12 marijuana in North Carolina. In 1983 he was convicted of
13 being in possession of a firearm as he was a convicted
14 felon. Your Honor, the firearms conviction in Federal Court
15 in North Carolina of which I previously mentioned.

16 Your Honor, at this time the State would note for the
17 record the conversation we had on the record in chambers
18 relative to the entry of the plea.

19 THE COURT: That proceeding is made a part of this
20 record.

21 MR. KITTRELL: Your Honor, the Defendant on April 7th
22 entered a plea of guilty to two Counts in the Indictment.
23 He pled to violating Section 44-53-37E, which is trafficking
24 in marijuana and he also pled to trafficking in cocaine.
25 Your Honor, the Defendant, as a part of that agreement,

1 promised to cooperate fully with the State and to be
2 truthful with the State's agents. The sentence which he was
3 to be imprisoned was a 25 year sentence, no part of which
4 may be suspended nor probation granted, and a fine of two
5 hundred thousand dollars. The Defendant is not eligible for
6 parole, extended work release, or supervised furlough. Your
7 Honor, the Defendant, as we mentioned previously, has not
8 been conforming to the terms of the agreement. The agreement
9 requires that he be truthful and fully cooperate with the
10 State.

11 As the agreement states, it notes that it is expressly
12 agreed if the State's obligations under this agreement
13 become null and void due to the lack of truthfulness or
14 lack of cooperation on the part of the Defendant, the
15 Defendant understands that the Defendant will not be allowed
16 to withdraw his plea of guilty to the offenses described
17 above, which I noted are two trafficking charges, each
18 carrying a 25 year sentence without parole.

19 THE COURT: I understand he's pleading to trafficking
20 in marijuana of more than ten thousand pounds and trafficking
21 in cocaine of 400 grams or more.

22 MR. KITTRELL: That is correct, but with regard to the
23 marijuana I think it was two thousand pounds, not ten
24 thousand pounds.

25 THE COURT: That carries 25 years or fifty thousand

1 dollar fine.

2 MR. KITTRELL: That's correct. Again, Your Honor, as I
3 noted, there were two superceding Indictments brought out,
4 90-GS-47-05001, which was the trafficking in marijuana
5 Indictment; and 90-GS-47-05002, which is the trafficking in
6 cocaine Indictment. The Defendant entered a plea to Count
7 one of both Indictments.

8 Your Honor, at this time I guess we'd ask the Court to
9 impose a sentence to the cocaine Indictment. Pursuant to
10 our discussion in chambers, at a later date hold a hearing
11 as to the Defendant's cooperation and the State's request
12 or motion to sentence the Defendant to consecutive terms
13 under the terms of the plea agreement.

14 THE COURT: I am going to make the plea agreement part
15 of the record and state for the record that as presiding
16 Judge it is my intention to comply exactly with the terms of
17 the plea agreement. In doing so, however, I would require
18 the Defendant to do the exact same thing. Now, the question
19 is raised as to whether or not he has in effect complied.
20 If he has, of course, I am going to sentence him to the
21 minimum 25 years concurrent, all of which will run concurrent
22 with the Federal sentence, as was agreed upon. If he has
23 not, then I will deal with him accordingly and I would
24 change his sentence to speak to his lack of cooperation.
25 But, Mr. Lofton, I will be glad to hear from you at this

1 time. The record also should reflect that this Defendant
2 has now retained Mr. Timothy Rogers and Mr. Mike Cox, I
3 believe, who stand with him and will be responsible for any
4 further appeals or any other matters other than those things
5 that are connected with the sentencing itself. As to those
6 things Mr. Lofton remains attorney of record. I will be
7 glad to hear from you, Mr. Lofton.

8 MR. LOFTON: Your Honor, just from a standpoint of a
9 point of clarification. Your Honor is saying you are going
10 to go ahead and sentence him pursuant to the plea agreement
11 as to both of the cases he pled guilty on?

12 THE COURT: No, sir, I am going to hear from you first.
13 I am going to require the State of South Carolina to make a
14 better showing than basically now. If I conclude here, after
15 listening to you and the State, that there exists a probable
16 cause to hold a hearing as to whether or not he has in
17 effect complied with this hearing, I am going to sentence
18 him on one Count, cocaine. I am going to sentence him
19 exactly according to the plea agreement. I then later will
20 hold a hearing as to whether or not he has complied with his
21 plea agreement, giving you full opportunity to present any
22 matters that you conclude. If I conclude from that hearing
23 that he did in effect comply, I will make any sentence on
24 that charge, which is the trafficking in marijuana, concurrent
25 with what I do today. If I conclude that he has not

1 complied with the plea agreement, then I will impose such
2 additional sentence as I think is appropriate under the
3 circumstances. Do you understand?

4 MR. LOFTON: Yes, sir.

5 THE COURT: First, before I hear from you, tell me
6 basically wherein you conclude that he has not complied. I
7 don't want a full evidentiary hearing because, obviously,
8 you aren't prepared to refute this, Mr. Lofton.

9 MR. LOFTON: That is correct.

10 THE COURT: I am going to require at this time a
11 sufficient showing of probable cause for the State not to
12 abide by the plea agreement.

13 MR. KITTRELL: Yes, sir, Your Honor. The State is
14 asking Your Honor to enforce the terms of the plea agreement
15 by requiring or imposing a consecutive sentence upon the
16 Defendant. Your Honor, that agreement requires that the
17 Defendant fully and truthfully cooperate with our office and
18 any other law enforcement officer with regard to the
19 possession and distribution of controlled substances and any
20 other related activities.

21 Your Honor, the Defendant was required by the terms of
22 the agreement to disclose all information and to be truthful
23 about it. As I mentioned earlier, the Defendant has to be
24 truthful and has to cooperate. If the Defendant fails to do
25 that, then the State's obligations under this agreement;

1 i.e., the obligation to ask the Judge to impose a concurrent
2 sentence, become void; and the Defendant would not be
3 permitted to withdraw the plea of guilty and the State could
4 ask for the maximum sentence, which is what we are doing.

5 THE COURT: I am not going to permit the Defendant to
6 withdraw his plea. That was entered into in great detail at
7 the hearing in Marlboro. That will not be done. What I
8 want to know by basis of probable cause why you say he has
9 not complied.

10 MR. KITTRELL: Yes, Your Honor. One of the terms of
11 the plea---

12 THE COURT: I am not going to rule on it at this time
13 for enhancement. Go ahead.

14 MR. KITTRELL: Yes, sir. One of the terms of the plea
15 agreement is that the Defendant submit to a polygraph
16 examination by a qualified State polygraph examiners. He
17 has done that recently, as we noted. However, at that
18 polygraph examination the Defendant failed to pass that
19 polygraph examination.

20 THE COURT: Are you prepared at a hearing to offer
21 appropriate testimony on that question?

22 MR. KITTRELL: Yes, sir.

23 THE COURT: Go ahead.

24 MR. KITTRELL: In fact, we will make available to the
25 Defendant and his attorney the complete records of the

1 examination of the Defendant, including the sheet on which
2 the polygraph examination is recorded. Your Honor, the
3 Defendant was interviewed by Agent Pete Logan who works for
4 SLED and used to be an FBI Agent for seven years.. Your
5 Honor, during the course of that interview the Defendant was
6 not fully forthcoming with information that he had. Mr.
7 Logan had available to him all of our records in the Grand
8 Jury with regard to statements given by witnesses and other
9 Co-Defendants who agreed to cooperate. Based on what these
10 other witnesses and Co-Defendants had stated Mr. Logan
11 compiled a list of inconsistencies given by the Defendant,
12 Charles Carpenter, which indicate that the Defendant was not
13 fully forthcoming or fully truthful and that he did not
14 fully disclose that which he knew. Your Honor, if you wish,
15 I can make this a part of the record or read through these
16 inconsistencies.

17 THE COURT: I want to hear possibly about the intimidation
18 of witnesses. I am not going to tolerate that under any set
19 of circumstances. Whenever I hear someone has attempted to
20 intimidate a witness in my Court there's going to be a full
21 hearing at all times.

22 MR. KITTRELL: Your Honor, specifically, with regard to
23 two Co-Defendants, Joseph Smith, aka Jesse James, and Kenny
24 Ray Taylor, and Ken Hoover as well, they would be willing to
25 testify that they were personally threatened by Mr. Carpenter

1 after all the Defendants entered the plea agreement.

2 Your Honor, the Defendant, Mr. Carpenter, threatened
3 these Co-Defendants because of the fact they were cooperating
4 with the State and providing information and providing the
5 willingness to disclose everything they knew.

6 THE COURT: Was that before or after they entered the
7 plea agreement?

8 MR. KITTRELL: This was after the plea agreement was
9 entered into in Bennettsville on April 7th of this year.

10 THE COURT: I want to confine your proof to matters
11 alleged after the plea agreement. None of that would be
12 appropriate prior to the plea agreement.

13 MR. KITTRELL: No, sir. Our contention is that the
14 Defendant was uncooperative and threatened the Defendants
15 who became our witnesses after the pleas were entered into.
16 I have not made any mention of other activities of the
17 Defendant prior to that plea. Your Honor, the Defendant
18 threatened the lives of these three individuals, who were
19 cooperating witnesses for this case and who would have
20 testified at trial. He not only threatened to take their
21 lives, he threatened to kill some of their relations.

22 For instance, with Kenny Ray Taylor he threatened to
23 kill his sister, Melanie Short. Ricky Lynn Johnson --
24 we received information from the police that he was afraid
25 to go into the exercise yard when the Defendants were all

1 sharing a cell in Chesterfield and that he had been threatened
2 by Mr. Carpenter and felt threatened by him physically.
3 Your Honor, additionally, the Defendant told different
4 police officers that he just wasn't going to cooperate and
5 that he didn't care if the Judge gave him 50 years. In
6 essence, there are certain things that he would just not
7 reveal to the State or to agents for the State. He was
8 in essence stating that he would protect some of the
9 knowledge he had and some of the people that he had been
10 dealing with from disclosing it to the agents who were
11 interviewing him during the course of time after the entry
12 of his plea.

13 THE COURT: That is sufficient to me to find probable
14 cause to conduct a full in-depth hearing on this question,
15 it seems to me. Mr. Lofton, let me hear from you.

16 MR. LOFTON: If the Court please. Without reiterating
17 everything we did in chambers, if I could just adopt the
18 arguments I made back there from the standpoint---

19 THE COURT: Yes, sir, that will suffice.

20 MR. LOFTON: I'll just make it a part of this as if I
21 had repeated them in full. Your Honor, as we indicated
22 earlier, oppose the continuance of these sentencing proceedings.
23 We would oppose a bifurcated sentencing proceeding. We would
24 respectfully request that the Court go forward with the
25 sentencing today pursuant to the plea bargain agreement.

1 If Your Honor is not going to go forward with the complete
2 sentencing and we are going to have a bifurcated sentencing,
3 I would ask that Your Honor order that the State turn over
4 to us for preparation for this subsequent hearing all plea
5 agreement of all Co-Defendants, all polygraph results of all
6 Co-Defendants including all charts run as a result of those
7 polygraphs, the names of each individual agent who interviewed
8 each of the individual Co-Defendants and on the various and
9 sundried occasions that they were interviewed.

10 THE COURT: You are entitled to all the evidence that
11 gives rise to their assertions today whereby they established
12 probable cause in his failure to cooperate. You understand
13 that?

14 MR. KITTRELL: Yes, sir, that is exactly correct.

15 THE COURT: There's no question about it. You are
16 entitled to and I order it given to you.

17 MR. KITTRELL: Yes, sir.

18 THE COURT: If the State pursues its contention of
19 failure to cooperate.

20 MR. LOFTON: In that same vein, Your Honor, as I
21 indicated in my previous argument, it would be a two-prong
22 attack on the State's position: One is whether or not there
23 was a compliance with the plea bargain agreement; and,
24 second, whether or not there was a selective prosecution if
25 the Court were to find there was not compliance; therefore,

1 that is the reason we make the request for all of those
2 additional records.

3 THE COURT: Yes, you are protected on the other record,
4 too.

5 MR. KITTRELL: Your Honor, that is, again, why we'd
6 have the hearing at a later date to give him an opportunity
7 to examine those records. We have provided throughout the
8 course of this investigation full disclosure to all the
9 attorneys for the Defendants -- complete and open discovery,
10 which is not required by any case law or statute in the
11 State of South Carolina and will continue to do so. We will
12 make available to Mr. Lofton or any other retained Counsel
13 any polygraph records or any witness interviews or any
14 statements we have upon which we base our motion.

15 THE COURT: In the event you elected to proceed with
16 this.

17 MR. KITTRELL: That is correct.

18 THE COURT: I'll be glad to hear from you.

19 MR. LOFTON: Bear with me just one second, Your Honor.
20 I'd like to confer with Co-Counsel and Mr. Carpenter.

21 THE COURT: I am going to give Counsel an opportunity.
22 Let me say this to you: My position is that the State
23 should comply exactly with the terms of the plea agreement
24 that they entered into, but, equally, the Defendant must
25 comply exactly. Now, if I find compliance on both sides I

1 am going to adhere exactly to what the Defendant and the
2 State agreed to. What I propose to this -- this gives me
3 some concerns, the assertions made by the State. I want to
4 give you ample opportunity to refute it. What I propose to
5 do is to comply exactly with the terms of this plea agreement
6 in so far as it relates to the Count of trafficking in
7 cocaine. Subsequent to that, if a hearing is held and I
8 conclude that there was substantial compliance I am going to
9 run the sentence with regards to trafficking in marijuana
10 concurrent with what I do today, which will be in total
11 compliance with the plea agreement.

12 If I conclude by a preponderance of the evidence that
13 this Defendant has not complied, then I will impose and
14 additional sentence with regards to the plea to the Count
15 tha I am leaving open; to wit, trafficking in marijuana.
16 That is what I propose to do. Now, you may confer. I felt
17 like you were entitled to have my thinking as you confer.

18 (An off the record conference was held between the
19 Counsel for the Defendant and the Defendant.)

20 MR. LOFTON: If the Court please, without waiving any
21 of our previous positions, we are prepared to go forward
22 with the sentencing pursuant to the plea agreement, keeping
23 in mind that we object to not having the entire sentencing.
24 I can't say it enough times, I guess. But we don't have
25 anything additional to add prior to the Court imposing

1 sentencing.

2 THE COURT: Mr. Rogers or Mr. Cox, anything you would
3 care to say at this time?

4 MR. ROGERS: Nothing further from us, Your Honor,
5 except to draw the Court's attention to what we previously
6 said on the record in chambers. Beyond that we don't have
7 anything further.

8 THE COURT: That is made a part of these proceedings
9 and this sentencing. Mr. Cox.

10 MR. COX: Nothing else, Your Honor. Thank you.

11 THE COURT: The Court appreciates both of you gentlemen
12 appearing here today.

13 MR. ROGERS: We appreciate the Court facilitating us.

14 THE COURT: You understand that I am going to require
15 Mr. Lofton to remain in this proceeding through this
16 sentencing today and through the subsequent hearing with
17 regards to cooperation if the State pursues that action.
18 Other than that, any matters including appeal, taking of
19 property, postconviction relief, any other proceedings are
20 you gentlemen's sole responsibility. You agree to that?

21 MR. ROGERS: Yes, Your Honor, we do.

22 THE COURT: Mr. Lofton, you understand that?

23 MR. LOFTON: Yes, Your Honor.

24 THE COURT: I want the Defendant's rights protected.
25 If there's any question about who's to do what, I put the

1 burden on the three of you gentlemen to conver.

2 MR. COX: Your Honor, I do have one question. Since
3 you are bifurcating the sentencing hearing I am not sure
4 when the time to appeal runs -- from the second hearing or
5 the hearing from today.

6 THE COURT: No, sir. The time for appeal is running on
7 what I do today, today. You can appeal it all. The time is
8 running; it starts today. Now, what I elect to do at the
9 bifurcation you may have an additional appeal from that. I
10 suggest to you your appeal runs from today on the decision
11 I make and that is on the Count of cocaine I am going to
12 comply exactly with the agreement.

13 After a hearing I will either comply with the agreement
14 or I will deal with it as a violation of the agreement.
15 That is what I propose to do.

16 Mr. Carpenter, I will be glad to hear from you, sir.

17 DEFENDANT: I have nothing to say.

18 THE COURT: Anything further?

19 MR. KITTRELL: Nothing from the State.

20 THE COURT: Which one is the cocaine Indictment?

21 MR. KITTRELL: Number 2 -- 90-GS-47-05002, Count one.

22 THE COURT: With regards to Count one of Indictment
23 90-GS-47-05002, trafficking in cocaine, it is the sentence
24 of the Court that the Defendant, Charles Eugene Carpenter,
25 be incarcerated for a period of 25 years and to pay a fine

SP-AZ-13 PENGAD/INDY. MUNCIE. IN 43101

SP-AZ-13

1 of two hundred thousand dollars. This sentence will run
2 concurrently with the sentence now being served in the
3 Federal Courts. In so far as that sentence is concerned,
4 does that comply, Mr. Lofton, with the plea agreement?
5 Was there any other thing in that plea agreement?

6 MR. LOFTON: The other matters that were discussed in
7 the plea agreement---

8 THE COURT: With regard to the other Indictment.

9 MR. LOFTON: ---have been disposed of.

10 THE COURT: With regard to the second Indictment
11 regarding trafficking in cocaine [sic], the Court is fully
12 aware that the plea agreement contemplates that the sentence
13 upon that Indictment would run concurrently with the
14 sentence previously imposed and would fully intend to do so
15 if the Court finds that the Defendant has in fact complied
16 with the plea agreement after further hearing in the matter.

17 If I find that he has not, then I will impose such
18 additional sentence as I deem appropriate as to that.

19 MR. LOFTON: Your Honor, just so there won't be any
20 question---

21 THE COURT: Raise any question you have, gentlemen. I
22 want it clear.

23 MR. LOFTON: ---about the concurrency of this sentence
24 with the Federal sentence, I would like for the record to
25 reflect it's the Federal sentence that was imposed in the

1 Western District of North Carolina, which Mr. Kittrell made
2 reference to a minute ago, the 24 month sentence. It's the
3 only other sentence he's under, but at some later date if
4 some court were to inquire we'd like for it to indicate.

5 THE COURT: Mr. Kittrell, you will agree that the
6 sentence as given is the sentence that's agreed upon.

7 MR. KITTRELL: Yes, sir.

8 THE COURT: Twenty-five thousand dollars [sic] and a
9 two hundred thousand dollar fine.

10 MR. KITTRELL: Yes, sir, 25 years and two hundred
11 thousand dollars.

12 THE COURT: And you understand that sentence would run
13 concurrently with the sentence now being imposed in the
14 Western District of North Carolina.

15 MR. KITTRELL: Yes, sir.

16 MR. LOFTON: We have one additional matter. We
17 understand that Mr. Carpenter is here pursuant to a writ
18 from the Western District of North Carolina. We would ask
19 the Court to instruct the State to keep him here until such
20 time as these proceedings are over so his new Counsel can
21 confer with him.

22 THE COURT: Let's see what problems that would have. I
23 am not sure what agreement you have with the authorities in
24 North Carolina.

25 MR. KITTRELL: Your Honor, the writ was issued requiring

PENGAD/MDY. MUNCIE, IN 47308

SF-AZ-13

1 the Defendant's attendance here and until sentencing was
2 complete he was to be kept in this jurisdiction. He's been
3 sentenced to a term of incarceration. I am not sure who
4 would have jurisdiction over his body, whether it be a
5 county---

6 THE COURT: Let's keep him here. I would conclude that
7 the sentencing proceeding is not concluded until I delve
8 into these other issues and I am retaining jurisdiction for
9 that purpose if the State of South Carolina makes a decision
10 to go forward seeking enhancement. I am not sure you have
11 made that decision.

12 MR. KITTRELL: Yes, sir, that is correct.

13 THE COURT: I am going to retain jurisdiction, obviously.
14 I am going to ask that you keep him within the jurisdiction
15 of the Court. Gentlemen, I want to move forward with
16 dispatch on this second issue. When I mean dispatch I mean
17 immediately. I am not going to continue it on and on. I
18 want to give you ample opportunity to prepare for it.

19 MR. KITTRELL: Your Honor, to that end, we will make
20 available, as soon as we get back to the office tonight,
21 those materials I made mention of, the polygraph examinations
22 of other witnesses and other Co-Defendants, and any other
23 witness statements that we may or that we may take over the
24 next several days.

25 THE COURT: Here's what you do. Make them available to

1 them. Turn these materials over to them. Then you gentlemen
2 confer as to when it would be an appropriate time for me to
3 go ahead and hear these matters. I suggest that the hearing
4 be held in Marlboro County when I am there the latter part
5 of June. I will be in Marlboro the third or fourth week in
6 June.

7 MR. KITTRELL: Your Honor, Sheriff Foley indicates, as
8 I understand, that he would not be opposed to having Mr.
9 Carpenter kept there so that his lawyers can available to
10 him.

11 THE COURT: Is that all right?

12 SHERIFF FOLEY: Yes.

13 THE COURT: I will be in Marlboro for a term of General
14 Sessions Court and that will be the appropriate time.

15 MR. KITTRELL: If I could note for the record, I have a
16 trial beginning June 18th on another Grand Jury investigation.

17 THE COURT: You gentlemen get together.

18 MR. LOFTON: One last thing, Your Honor. Would you ask
19 the State to furnish me a copy of the materials as well
20 as the new Counsel because you understand the precarious
21 situation we may be in?

22 THE COURT: Yes, sir. I understand both of your
23 positions here. I will be glad at any time to discuss that
24 with you.

25 MR. ROGERS: Your Honor, one other thing. Do I

PENCAD/NDY. MUNCIE. IN 47802

SF-AZ-13

1 understand from Mr. Kittrell that he is going to undertake
2 additional investigation which would lead to the creation of
3 some additional matter that is not now in the file?

4 MR. KITTRELL: What I am going to do is go ahead and
5 get formalized those interviews I made mention of during the
6 presentation of probable cause. In other words, those
7 witnesses who have given statements to the police would be
8 interviewed so that they would give signed statements for
9 ya'll to be able to review.

10 THE COURT: I can handle it. I want you to turn over
11 to them anything that you have got that gives rise to a
12 basis for the assertion of failure to cooperate, be it
13 stated here today or later determined by you. Anything that
14 you are going to use in such a hearing I want them to have
15 advance notice. Give them a BRADY disclosure.

16 MR. KITTRELL: Yes, sir, Your Honor. I will give them
17 everything we have. I'll get those statements to you as
18 soon as they are made.

19 MR. ROGERS: Timing is the main concern that I have
20 there if he is going to be developing new material.

21 THE COURT: The first threshold question is whether or
22 not they are going to pursue this. Developments may occur
23 this week that would make them decide not to.

24 MR. KITTRELL: Yes, sir.

25 THE COURT: If it does, though, they are to turn over --

SP-AZ-13 PENGAD/INDY. MUNCIE, IN 47202

SP-AZ-13

1 there's no question about it, they are not going to use
2 anything at that proceeding that they didn't give you notice
3 on. That is about as conclusive as I can get.

4 THE COURT: June 25th is the date that I would like to
5 work towards when we will start Court in Marlboro County.

6 MR. KITTRELL: I would like to note that is the second
7 week that I might be in trial in Lexington. If we could
8 schedule it towards the end of that week.

9 THE COURT: I'll work that out with. I'll work it out
10 with the trial Judge if necessary. Let's look towards that
11 time. Sheriff Foley, do you have adequate facilities to
12 keep the Defendant in Marlboro County?

13 SHERIFF FOLEY: I believe so.

14 THE COURT: He'll be there for you gentlemen.

15 MR. ROGERS: Thank you very much, Your Honor.

16 THE COURT: Thank you.

17 [end of requested transcript of record]
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SF-AZ-13 PERCEADINDY. MUNCIE. IN 47302

CERTIFICATE

I, the undersigned, Patricia S. Dial, Official Court Reporter for the State of South Carolina in the Fourth Judicial Circuit, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record and all evidence introduced, relative to appeal, in the Court of General Sessions for the Fourth Judicial Circuit, held in Dillon County, South Carolina, on the 4th day of June, 1990.

I further certify that I am neither related to nor counsel to any party in the cause pending or interested in the events thereof.

August 3, 1990

Patricia S. Dial
Court Reporter

Patricia S. Dial
Copy - August 3, 1990

SF-AZ-13 PENGAD/NOV. MUNCIE, IN 47302

EXHIBIT
DROA 0125

OK
5K-472

Wm/38
181783
SENTENCE

3545

OFFENSE Conspiracy - Trafficking
in Cocaine § 44-53-370(c)

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

count out of CASE NUMBER 90 GS-X-4705002

THE DEFENDANT Charles Eugene Carpenter IS COMMITTED TO THE STATE
OR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 25

~~MONTHS~~ YEARS AND/OR TO PAY A FINE OF \$ 200,000; PROVIDED UPON THE SERVICE
OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF \$ _____; PLUS

PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE
IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury \$ _____

For Property damage \$ _____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: Concurrent w/ sentence now serving from
Federal Court in N.C.

DATE: June 4, 1990

COSTS AND ASSESSMENTS:

E. B. CATTINGHAM
PRESIDING JUDGE

Ang Patterson
Deputy CLERK OF COURT, CHESTERFIELD COUNTY, S.C.
State Grand Jury

FILED

JUN 4 1990

LISA C. DUNBAR,
CLERK, STATE GRAND JURY.

Ozmint Firm FOIA Charles Carpenter 181783 & Bobby Horne 188185
4/24/2015 GC71

ATTEST

A TRUE COPY
Lisa C. Dunbar

ROA-0125

EXHIBIT
ROA 0126
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1 (WHEREUPON THE FOLLOWING MATTERS WERE HEARD
2 AUGUST 9, 1990, BEFORE HONORABLE EDWARD B. COTTINGHAM.)

3 Mr. Kittrell: Your Honor, this involves the
4 State of South Carolina versus Charles Eugene Carpenter,
5 also known as Fireball. This is in specific regards to
6 indictment 90-GS-47-005001. This is the second half of a
7 bifurcated hearing, the first hearing having been held on
8 June 4, 1990, the Defendant having entered a plea of
9 guilty to two counts of trafficking in marijuana and
10 cocaine on April 7th. Your Honor, I've prepared a
11 memorandum of law and attached the plea agreement that the
12 Defendant entered into and I, as well, attached
13 transcripts of record from the April 7th plea and from the
14 June 4th hearing. If I could make that a part of the
15 record.

16 Court: All right, you want to make the brief
17 memorandum of law a part of the record, too?

18 Mr. Kittrell: Yes, sir.

19 Court: All right, and I've previously advised
20 counsel for the Defendant this morning that they were free
21 to submit a memorandum. Mr. Lofton and Mr. Rogers, it's
22 my understanding that you don't have a memorandum?

23 Mr. Lofton: Yes, sir.

24 Mr. Rogers: That is correct.

25 Court: All right, let the record reflect that

84

1 Mr. Lofton, counsel for the Defendant Charles Eugene
2 Carpenter and Mr. Rogers, who is subsequent counsel, is in
3 court and present, along with the Defendant.

4 All right, sir, be glad to hear from you.

5 Mr. Kittrell: Your Honor, the copy of that
6 memorandum as well as the attachments have been provided
7 to both counsel for the Defendant. Your Honor, we are
8 here today, in essence, to determine whether or not the
9 State must fulfill its obligations as noted in the content
10 of the plea agreement itself. The plea agreement, which I
11 noted before, is attachment one, requires that the
12 Defendant do several things. The Defendant has to
13 furnish, fully and completely, cooperate with the State.
14 That involves giving us information with regard to drug
15 activity, drug-related activities, most specifically with
16 regard to this case and as to any other drug activities he
17 may know of or have knowledge of. Of course, that also
18 includes any knowledge he has of other individuals who
19 also engage in drug activities.

20 Your Honor, that cooperation that is required of
21 him is absolute. He has to be completely truthful of his
22 knowledge.

23 Court: All right, the record will reflect the
24 previous hearings in the matter, including first, the
25 hearing in Marlboro County, where the plea agreement was

85

1 accepted and the voluntariness of the plea was
2 determined. Also, of course, there is a record of the
3 subsequent hearing held here in Dillon County where, by
4 bifurcation, I sentenced the Defendant to twenty-five (25)
5 years and held open the question as to whether or not he
6 had complied with the other terms of the agreement. I,
7 therefore, ordered at that time that a subsequent hearing
8 be held in accordance with Santobello vs New York, 404 US
9 275 and US vs Simmons, 537 Fed2d 1260, which was a 4th
10 Circuit opinion of 1976. It was, therefore, subsequently
11 determined that we would hold this hearing, the purpose
12 being to determine whether or not the Defendant, in fact,
13 has complied with the language of the plea agreement that
14 he was required to do. Prior to proceeding now, I would,
15 of course, entertain any thoughts or comments that the
16 attorneys, Mr. Lofton or Mr. Rogers, may have with regard
17 to that issue.

18 Mr. Lofton: If the Court please, Your Honor, of
19 course, we would like to note for the record that at the
20 time of the hearing on June 4, 1990, we objected to the
21 Court bifurcating the sentencing and we want that
22 objection noted from the previous hearing.

23 Court: Yes, sir, that objection will continue.
24 Your objection was noted duly at that time.

25 Mr. Lofton: Your Honor, just so the Court will

1 understand what our position is, because I understand Mr.
2 Kittrell intends to introduce some testimony and so forth,
3 and so you'll know exactly where we are ---
4

5 Court: First, tell me what status you now
6 occupy. I want to get that clear. At the last meeting,
7 as I understood, you were fired and Mr. Rogers was hired.

8 Mr. Lofton: That's the status I remain in. I am
9 here because Your Honor told me to stay through the
10 sentencing.

11 Court: Because there was some question as to the
12 prior proceedings when you were counsel, I ordered you to
13 be here and I thank you for that.

14 Mr. Lofton: And it was my understanding that I
15 was to handle this hearing, basically, today, which I
16 intend to do.

17 Court: Yes, sir, and I agreed to let, at that
18 time, his new counsel, of course, participate to the
19 extent that he desires, Mr. Rogers, and I still do that.
20 You understand that?

21 Mr. Rogers: Yes, sir.

22 Court: All right. Now, you are here just
23 through this hearing. You're still fired, I take it?

24 Mr. Lofton: I'm still fired but I'm here for
25 this hearing.

Court: All right.

87

1 Mr. Kittrell: Your Honor, if I could make one
2 clarification for the record. In essence, he made a
3 motion to be relieved as counsel and that motion was
4 denied and that is why he's still being...

5 Court: Yes, sir. I'm going to relieve him after
6 these issues are resolved. The Defendant's entitled to
7 have such counsel as he chooses, but Mr. Lofton
8 represented him, and I thought very ably, throughout the
9 proceedings, and to protect him, too, I thought it prudent
10 and proper that he at least stay in through today's
11 proceedings.

12 Mr. Kittrell: I understand, Your Honor.

13 Court: All right, go ahead. I interrupted and I
14 apologize, but I wanted to get your (Mr. Lofton) status
15 clear.

16 Mr. Lofton: Your Honor, what our position
17 basically is in connection with this case, is the
18 government, or the State, entered into plea agreements
19 with 16 Defendants in connection with this particular, or
20 these particular indictments. All of the plea agreements
21 are basically the same from the standpoint of what the
22 various Defendants had to do and what the State was
23 required to do. All of the plea agreements provide that
24 each and every one of those agreements is contingent upon
25 an individual Defendant passing a polygraph examination in

1 addition to the other language, cooperation and so forth.
2 To date, Your Honor, the State has selected and elected to
3 polygraph seven of the Defendants, including Mr.
4 Carpenter. There are nine which the State has elected not
5 to polygraph and maybe they have that right. I'm not
6 gonna argue that with the Court today.

7 Your Honor, what our concern is, that Mr.
8 Carpenter is being singled out for prosecution, selected
9 -- we say it's a selected prosecution-type situation,
10 because the State is mad at him and they're mad at him for
11 a number of reasons. They don't think he fully cooperated
12 and he did show up as being deceptive on the polygraph.
13 But, Your Honor, we ---

14 Court: Showed up as being what?

15 Mr. Lofton: Deceptive.

16 Court: All right.

17 Mr. Lofton: But, Your Honor, so did a number of
18 the other individuals that they polygraphed, and no action
19 has been taken against those individuals to attempt to
20 violate their plea agreement. And, so, contrary to the
21 State's position, and no matter what sort of evidence they
22 offer about whether or not Mr. Carpenter has violated or
23 breached the plea agreement -- and we're not gonna concede
24 that he did, but no matter what they say about that and
25 even if we were to concede that he did, what we're saying

89

1 is that the 16 Defendants that entered pleas, pursuant to
2 plea bargain agreements, he is the only one that is being
3 singled out for prosecution because he failed the
4 polygraph and failed to cooperate under their
5 interpretation, even though there are others similarly
6 situated.

7 Court: You make a telling point, counsel, if the
8 only thing he's done is failed to pass the polygraph test,
9 when you tell me that they didn't even given other
10 individuals the polygraph.

11 Mr. Lofton: That's correct, Your Honor.

12 Court: And as to that issue your point is
13 telling. Now, there well may be some other bases for this
14 hearing today and I'll have to hear that.

15 Mr. Lofton: Well, as Your Honor knows from the
16 memorandum that Mr. Kittrell has filed, there are other
17 allegations concerning threats to witnesses and so forth,
18 but I'd call to Your Honor's attention that all of those
19 alleged activities, as you made reference to Mr. Horne
20 today, when you talked about whether or not it happened --
21 I can't argue that -- the police threatening him, all of
22 those things happened after the fact supposedly. And the
23 point I'm trying to make, Your Honor, is assuming, for the
24 sake of argument, that there were threats to witnesses,
25 these were after Mr. Carpenter had entered into a plea

90

1 agreement.

2 Court: But didn't he agree at the time he
3 entered into it, on April 9, one, that he would cooperate;
4 two, that he would keep the laws of -- wouldn't
5 intimidation of witnesses, if that occurred, subsequent to
6 the signing of the plea agreement, be a violation of that
7 agreement, under the general terms of it?

8 Mr. Lofton: Well, of course, we dispute the fact
9 that he intimidated any witnesses.

10 Court: Oh, I understand that. But if it
11 occurred, wouldn't that be some evidence of violation of
12 the plea agreement?

13 Mr. Lofton: It very well may, Your Honor. But
14 if, as the State alleges, and if as they stated in their
15 memorandum, those things did occur ---

16 Court: Well, I can tell you they've got -- and I
17 interrupt you and I apologize -- it's just my way --
18 they've got to show me more than a violation of a
19 polygraph test because our courts have repeatedly held,
20 and I concur with them, that they haven't reached a
21 scientific level that we can accept them in toto. They've
22 got -- your point is well taken that they've got to show,
23 in my view, more than a failure to pass the polygraph
24 test, particularly when they didn't give everybody the
25 polygraph test. Now, whether they can do that or not, I

91

1 don't know.

2 Mr. Lofton: Well, the only point I'm trying to
3 make, Your Honor, is that because of the posture that this
4 case is in, if there were, in fact, violations of state
5 law, i.e., intimidation of witnesses, then there is a
6 method whereby, pursuant to the statute, they can
7 prosecute an individual for those violations and we don't
8 get into whether or not there's been a breach of a plea
9 agreement. That's the point I'm trying to make. There's
10 a clean way for the State to accomplish what they're
11 attempting to do. This is a muddy way, but I guess
12 they're entitled to proceed whichever way they want to
13 proceed.

14 Court: I understand. Mr. Rogers?

15 Mr. Rogers: I don't have anything further to add
16 to that.

17 Court: All right, Mr. Rogers, since he was
18 involved, as necessary I will address Mr. Lofton, but as I
19 do that you be sure that I intend for you to speak to if
20 you desire. I want that fully understood.

21 Mr. Rogers: Thank you, Your Honor.

22 Court: All right, are you ready to take any
23 testimony?

24 Mr. Kittrell: Yes, sir, we will offer some
25 witnesses.

1 Court: Have you provided these gentlemen with a
2 copy of your brief?

3 Mr. Kittrell: I've given them a copy of the
4 brief, as well as all of these items.

5 Court: All right, you may proceed.

6 Mr. Kittrell: Your Honor, in response to the
7 polygraph, he is right, that is a part of the plea
8 agreement. Paragraph 4 of the agreement states that the
9 Defendant agrees to submit to polygraph examination by any
10 qualified state polygraph examiner, should he be requested
11 to do so. Obviously, that's an option the State has and
12 is somewhat limited by the resources that we have
13 available to us. In any event, Your Honor, the polygraph
14 is only one portion of this hearing. The polygraph, in
15 essence, is the least important of those activities that
16 the Defendant engaged in which caused his breach and
17 leaves us with the obligation to request of you that you
18 impose the current time.

19 Court: All right, sir, in accordance with the
20 decisions that I have cited, we will have the hearing at
21 this time and that's why we are here convened, to see
22 what's occurred, if anything.

23 Mr. Kittrell: Your Honor, before we begin to
24 paint a picture of where we're going, I've noted that the
25 plea agreement has four relevant portions that we're

93

1 alleging the Defendant has failed to comply with. Again,
2 the fourth one is, paragraph 4, and that's the polygraph
3 portion. Paragraph 4 requires that if the Defendant
4 submits to the examine, if he's requested to do so, he has
5 to successfully complete it to the State's satisfaction.
6 The last sentence of paragraph 4 states, this plea
7 agreement is expressly contingent upon successful
8 completion to the State's satisfaction of the polygraph
9 examination.

10 Court: That's number one that you ---

11 Mr. Kittrell: Your Honor, that's actually the
12 last important of them all, especially in light of the
13 fact that Mr. Lofton has conceded that this Defendant,
14 Carpenter, indicated as being deceptive on his polygraph
15 examination and, in essence, that he failed it.

16 Your Honor, the Defendant was also obligated to
17 cooperate fully with the State. We would allege that the
18 Defendant has not fully cooperated; that, in fact, he has
19 withheld information. That he knew of other individuals
20 who engaged in drug-related activities but did not reveal
21 that to the State or to the State's agent.

22 Court: Cooperation is your second one?

23 Mr. Kittrell: Yes, sir. Noting in the summary
24 of the plea agreement contained in the memorandum on page
25 2, note the specific paragraph that requires the Defendant

94

1 to cooperate and what that level of cooperation is to be.

2 Court: All right.

3 Mr. Kittrell: Contained within paragraph 2.

4 Court: All right. Now, you said there were
5 four, I believe.

6 Mr. Kittrell: Yes, sir. Also, Your Honor, I
7 think paragraph 12 states -- and this has been touched on
8 briefly, the Defendant, Charles Eugene Carpenter, aka
9 Fireball, understands that the State's obligations, under
10 this plea agreement are expressly contingent upon the
11 Defendant's abiding by State and Federal law. Your Honor,
12 as has been mentioned, the Defendant, and we will produce
13 witnesses to prove this -- the Defendant has threatened
14 various cooperating co-defendants for their cooperation
15 with the State. He has threatened them before they talked
16 to the Grand Jury and, indeed, talking to the Grand Jury.
17 These threats on the lives of cooperating witnesses
18 constitute two separate violations. There is a statutory
19 provision noted in the Code at 16-9-340, which forbids
20 intimidation of witnesses and, in addition, these actions
21 also constitute obstruction of justice and I cite Burns vs
22 Clayton, State vs Cogdill, State vs Love and State vs
23 Dewitt.

24 Your Honor, when a Defendant intimidates
25 witnesses, when a Defendant threatens their lives for

95

1 their cooperation, not only does he violate various State
2 laws and possibly federal laws, he is also not fully
3 cooperating because he's hindering the investigation of
4 drug activities in South Carolina.

5 Last, Your Honor, the Defendant has been required
6 by the plea agreement to surrender illegally obtained
7 assets. At this time none of those assets have been
8 turned over. We have had several discussions with Mr.
9 Lofton about those assets but I believe that one of the
10 witnesses will testify, specifically, that Mr. Carpenter
11 told him that Mr. Carpenter owned property in the
12 mountains, he wasn't gonna tell where those properties
13 were because he was afraid the State was gonna seize it.

14 Court: What is the position of the Defendant now
15 with these illegal assets, that he has none or refuses to
16 disclose them? Or what's your allegation with regards to
17 that?

18 Mr. Kittrell: Your Honor, there is a series of
19 pieces of property, land, vehicles, that the Defendant has
20 possession of or control over or that he has tendered over
21 to relatives, of his family. These include the lot of
22 land that he owns, adjacent piece of property placed in
23 somebody else's name, the furniture within that house.

24 Court: Are you alleging then that he's either
25 divesting or hiding? Is that your allegation?

97

1 Mr. Kittrell: Yes, Your Honor. That is correct.

2 Court: All right, sir. Now, any reply to that
3 at this time, Gentlemen, or are we ready to take the
4 testimony as to any or all of these issues?

5 Mr. Lofton: We're ready to go forward, Your
6 Honor.

7 Court: All right, call your witnesses, Mr.
8 Kittrell.

9 Mr. Kittrell: Eddie Gordon.

10 EDDIE GORDON, BEING FIRST DULY
11 SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. KITTRELL:

13 Q Please state your full name for the record,
14 officer.

15 A My name is Eddie Gordon.

16 Q Eddie Gordon, where do you work?

17 A I work with the Governor's Raid Team.

18 Q How long have you worked there?

19 A I've been with the Governor's Raid Team since
20 it's been in existence, for now a little over two years --
21 or near about the existence. I was there right at two
22 years next month. I've been in police work 23 years.

23 Q During those 23 years, what type of jobs did you
24 have?

25 A I was a State Highway Patrolman for 21 of those

96

1 years and two of them I've been with State Narcotics.

2 Q Did you have much training or experience with
3 regards to the investigation of narcotics or drug
4 trafficking activities?

5 A Well, I've had a lot of experience with it and
6 then the last two years I've been assigned to the State
7 Grand Jury, which is totally a drug-investigating
8 mechanism of the State, I guess you'd say.

9 Q What did you do for the Raid Team?

10 A I was assigned as a case agent, or one of the
11 case agents to the Charles Eugene Carpenter case.

12 Q So, in essence, you were one of the case agents
13 who investigated the Defendant here today?

14 A That's correct, sir.

15 Q Could you tell us a little bit about some of your
16 activities during the length of time of your involvement
17 in this investigation?

18 A Well, I guess I understand what you're saying.
19 We started from the very beginning of the case,
20 investigating his drug activities, also identifying his
21 assets. We also went all the way through the process up
22 to the point of arresting him. Once that occurred,
23 through the plea agreement and then during all of this
24 time I, on most every occasion -- I can't think of one
25 that I didn't -- there may have been one -- transported

98

1 him back and forth during this time, sir.

2 Q During the course of the investigation, what
3 counties were you working with?

4 A Marlboro County, Chesterfield County, some of
5 which drifted over into other counties, where we did
6 investigations, but primarily Marlboro and Chesterfield
7 Counties.

8 Q As far as your duties in investigating Carpenter
9 and the drug ring, did you interview witnesses throughout
10 those counties?

11 A That's correct, sir, I did.

12 Q Do you know about how many witnesses you may have
13 spoken with the last couple of years?

14 A I don't know. I'd say in excess of twenty, but
15 the exact number I don't know, sir.

16 Q So you're fairly familiar with the Defendant and
17 with his associates and his associations and his
18 activities? Would that be a fair statement?

19 A Yes, sir, I feel like I am.

20 Q Now, you had mentioned that you transported the
21 Defendant after he entered his plea, is that correct?

22 A That's correct, sir.

23 Q Now, do you know -- what other times did you
24 transport him?

25 A I transported him after he had been arrested to

99

1 his bond hearings and this type thing.

2 Q Did you transport him to the State Grand Jury for
3 interviews on several occasions?

4 A That I did, sir.

5 Q Did you transport him to CCI for protective
6 custody?

7 A That I did, sir.

8 Q Do you know about how many times you have
9 transported him since April 7?

10 A I would say four to five times, roughly.

11 Q And during those times that you transported him,
12 did you talk to him?

13 A Yes, sir, I did.

14 Q Did you all hold conversations?

15 A Yes, sir, we did.

16 Q Would you tell the judge some of those
17 conversations that you held with him, things that he told
18 you?

19 A Okay, primarily ---

20 Mr. Lofton: Your Honor, if he's gone relate a
21 conversation we'd like to know specifically dates, time,
22 place they occurred.

23 Court: Yes, sir. Please do that.

24 A Since the sentencing, and which I may stand
25 corrected on a date or exact time, and so forth, but I can

100

1 clarify them, I think, with the counselor there. After
2 the sentencing, I think one of the first times that he
3 was transported by me ---

4 Court: Now, after sentencing in Marlboro or
5 Dillon?

6 A This is Marlboro.

7 Court: You mean that was after the plea
8 agreement.

9 A This is after the plea agreement.

10 Court: All right, that's what he wants to know,
11 with some specification.

12 Q Your Honor, if I could add to the record, I
13 believe the plea was entered on April 7, 1990.

14 Court: All right, sir.

15 A During that time, I had to move Mr. Carpenter
16 several times. One of the times that I had to move him
17 was because of problems that he was causing at, allegedly
18 causing at the jails and so forth, that I had to move him
19 to other jails. I moved him and, of course, these records
20 could be obtained from the jails as to when I had to move
21 him -- from Chesterfield to Darlington County, because he
22 was intimidating and threatening witnesses and so forth.
23 That was my purpose in moving him. But, also, during this
24 time, when we took him to administer a polygraph to him, I
25 met down there with Mr. Pete Logan, or Agent Pete Logan,

101

1 who is in court today, and met with Mr. Lofton, who was
2 there also. During that time, on the way down there, we
3 were discussing his plea agreement. Mr. Carpenter has
4 expressed vividly to me, numerous times -- his motto is, I
5 have good blood. I asked him one time to define good
6 blood, but he did it on his own several times. Good blood
7 to him means, I do not rat, snitch, rogue, on anyone or
8 any of my friends. He says the judge can give me a
9 hundred years or he can give me fifty years or what he
10 wants to do, I'm not telling on my friends. I stated to
11 Mr. Carpenter, hey, you know, this is in violation of your
12 plea agreement and if those questions are asked of you,
13 you cannot pass the polygraph if you don't tell the
14 truth. And he says, well, that's just the way it will
15 have to be. I will not rat on my friends. That's good
16 blood.

17 I told him, I said, well, if you're not going to
18 do that you really had no reason to plead if you're not
19 gonna meet your plea agreement. He said, talked to me on
20 numerous occasions about his escaping, that at any time he
21 could escape. He convinced me enough, and I have
22 transported him on that account because he's indicated to
23 me that he could leave at any time he wanted to, that the
24 only reason that he had not left was because his mother
25 was in bad health, that his daughter and his wife or

102

1 girlfriend at that time, he could bring to him, but his
2 mother he could not. He said, but you can count on this,
3 if she was to die, I'd be gone. And he's talked of places
4 in South America and so forth, that he's been there, that
5 he's familiar with, that he could go to. And he has
6 expressed that was the only reason that he was staying. I
7 felt like, from that, that he meant that if his mother
8 wasn't here he would go. It's just that simple.

9 After we brought him to Columbia for some of
10 these polygraphs, which Mr. Lofton was there on one
11 occasion -- I started to say a while ago -- with Special
12 Agent Logan, where Carpenter refused to be debriefed
13 without consulting each and every time with Attorney
14 Lofton and asking us to leave the room. This became so
15 apparent in everything that we asked him that he was not
16 going to reply to, that the debriefing was not completed,
17 neither was the polygraph given. But Mr. Lofton and I
18 even discussed, hey, if he could just have a contact visit
19 with his family maybe he would agree to cooperate if this
20 was to happen. Mr. Lofton and I talked about that and I
21 took Mr. Carpenter back to Chesterfield. His wife came
22 into the jail there, his mother came in, and I sat outside
23 of the room and supervised an hour and a half, or more, of
24 contact visit. After this contact visit was made he
25 walked out and I told him, I said, Fireball, you still

103

1 need to now, you've got what you want, cooperate on your
2 plea agreement. The Grand Jury is not gone continue to
3 run you back and forth down there. He turned in the
4 doorway at that time and told me -- and this is the
5 language that he used -- I've got what I want now, fuck
6 you. I turned around and walked out.

7 The next time he was brought back, I brought him
8 back for another polygraph, this time to be given by Agent
9 J. B. Rowland, who is also in court today. Upon bringing
10 him back that time Mr. Lofton was contacted and was not
11 there. He refused to take the polygraph or cooperate at
12 that time. I had to transport him back and put him back
13 in incarceration.

14 The next time that he agreed to take it, I
15 brought him back that time. Agent Rowland and myself
16 debriefed him and in that debriefing, prior to the
17 polygraph, he picked who he wanted to testify against. We
18 would call names of people who we know that he was
19 associated with by their nicknames, one of which I'll
20 refer to as lawyer boy. Most Defendants that were primary
21 players in this organization called the name, lawyer boy.
22 He is a big money-man in the organization. He is a man
23 who is, nobody would identify until there at the last.
24 Carpenter told us, I don't know any lawyer boy, unless
25 you're talking about Charlie Coleen (phonetics). He would

104

1 not tell us that. We know for a fact that he was
2 associated with this guy. We have information where he
3 had stashed a guy named Hart, large quantities of
4 marijuana. And recent, right prior to his arrest. We
5 asked him about Hart. He said, I'll tell you the way I'll
6 tell you Hart, put me and my family and, virtually, he
7 said, everybody that meant something to him under the
8 federal protection program and I'll tell you his name --
9 or show you where he lives. He says, I don't know his
10 name. This he would not do. This was something current
11 that we had belief at that time that this large amount of
12 dope may still be stashed in that place. This, he refused
13 to do.

14 And it goes on and on and on, some of the things
15 that he would refuse to do, identify, and so forth. But
16 what I'm saying is, that was two of the main things that
17 we were interested in and he refused to do.

18 Q Are you familiar with deals that he may have been
19 involved in that he didn't give you information about?

20 A Yes, sir, I am.

21 Q Could you name some of those?

22 A Well, we know of deals that transpired, that took
23 place in North Carolina, that was of sizes that he would
24 not tell us about. We know that there was deals involving
25 this Hart guy that he would not tell us about, or we have

105

1 witnesses to that effect, or we have statements to that
2 effect. We know of deals that have occurred -- I was
3 trying to think of the name of the town -- but, anyhow,
4 other parts of the state that occurred.

5 Q You've indicated that he's failed to cooperate by
6 not giving up information that you knew he should know
7 about and, additionally, that he indicated to you he
8 wasn't gonna give up certain information.

9 A That's correct.

10 Q How about with regards to threats? Have you ever
11 been around him when he issued a threat to any of the
12 cooperating co-defendants?

13 A Right. Number one is, the threat that I heard is
14 the day, here in Dillon. I was standing here, on the day
15 that the co-defendants were sentenced.

16 Q You talking about June 4, 1990?

17 A This was June 4th. The co-defendants were
18 sentenced. All of which -- I transported Mr. Carpenter at
19 that time -- all of which they were sitting to my right,
20 in those chairs there at that time.

21 My sole job right then was to keep my eye on Mr.
22 Carpenter. He was in, up and about. You'd have to keep
23 him sitting down. When the other co-defendants came in
24 and sat down I was standing in the neighborhood of where
25 you are now, but in front of your bench there, when I

106

1 heard him make a statement at Kenny Ray Taylor and
2 something in that statement was to the effect, you're
3 dead. The whole statement I didn't hear. Then they just
4 about got in a fight. I had to come over here at that
5 time and threaten to take Mr. Carpenter out and put him in
6 a room by himself. Of course, Taylor was in an uproar, he
7 said he's gone kill me, or I was a dead man, and I had to
8 stop that. This was a threat that happened in this
9 courtroom. Other times that I have taken, interviewed the
10 co-defendants in other threats and so forth, when I asked
11 Mr. Carpenter about it he said he was too much of a
12 professional for that, I should know that he didn't make
13 open threats like that, indicating to me or telling me in
14 such a manner that he had other ways of handling it
15 without openly making threats.

16 Q Let's turn our attention to the assets that he
17 has obtained illegally through drug-trafficking
18 activities. Would you, for clarification of the court,
19 name some of those assets and where they're being
20 currently held?

21 A Your Honor, we have in Marlboro County, which, of
22 course, it's been pretty well publicized, a house which is
23 referred to as a compound in Marlboro County. He's never
24 admitted that house even as being his, although we have
25 information and the person's name that the light bill is

107

1 in and so forth. He told us this house belonged to a
2 friend of his in Florida. We have information or the
3 representation from that friend, that we know that this
4 house does not belong to him but Mr. Carpenter still says
5 it was a clubhouse built by everyone. This house is still
6 in someone else's name, as far as the recorded deed. We
7 also know that he owns vehicles which drug deals were done
8 out of, one of which is a 1984 van, which as of last week
9 was sitting in a garage at his brother's garage in North
10 Carolina, at Carpenter's Garage in Wadesboro. We know
11 that he has a new model, 1989, I believe, Blazer truck,
12 which was driven at one time by his people up there. We
13 know that he has a new four-wheeler vehicle that drug deal
14 was done off of while in this investigation, we discovered
15 was actually stored in this four-wheeler, which is no
16 longer there and was removed and taken into North
17 Carolina. We know that he has a John Deere tractor, which
18 was brought at the Wadesboro John Deere Tractor place,
19 which is at his father's house now, that he bought and
20 paid for.

21 Q His father's house is where?

22 A Not Wadesboro, North Carolina but right outside
23 of Wadesboro there. It's in North Carolina -- Hanson
24 County anyway.

25 We also have information -- and as a matter of

108

1 fact this information he gave to me through conversation
2 and then told me afterwards that he had two acres of land
3 in North Carolina. I said, where is this land at? He
4 said, I'll sell it to you. I said, well, I might be
5 interested in that, where is the land at? He said, to
6 hell with you, you just want to seize my land -- I haven't
7 got any land, and dropped it at that. We have since found
8 out that he does own land, I believe in McDowell County,
9 some mountain property up there. So these are most of the
10 assets, I think. I may have left out some assets that
11 we're aware of, but that's primarily the assets that we
12 know that he has and some of these assets, especially the
13 house and the land and so forth, I feel are worth a lot of
14 money.

15 Q What about furniture that is contained in this
16 house that he called a club house?

17 A That furniture and -- matter of fact, that
18 furniture -- it was furnished real nice. This house had
19 some real, real nice furniture in it. All of that was
20 taken out by members of his family and taken to North
21 Carolina. Also, this property up there had a cyclone
22 fence around it and I think I'm safe to say it's at least
23 6 foot tall with barbed wire around the top and fenced in
24 approximately two or three acres. In my opinion, just
25 asking different people the prices of cyclone fences,

1 probably six to eight thousand dollars worth of cyclone
2 fence that was torn down and taken away from his place
3 also. This was also done by members of his family.

4 Q Have you heard mention of a boat?

5 A Yes, sir, he has a boat that he bought -- all the
6 information I don't have on it, but I know that he did buy
7 a boat and I can get the dates and times on that, and it
8 was sitting in his father's yard a couple of weeks ago in
9 North Carolina.

10 Q Do you have an approximate value for that boat?

11 A I can tell you what the boat was that was bought
12 at the same time, was valued at \$15,000. Now, that was
13 some time back.

14 Q And did he ever reveal to you that he had
15 purchased that boat, and I'm speaking specifically of Mr.
16 Carpenter.

17 A He never has. As a matter of fact, he's never
18 owned up owning any of the properties that I'm talking
19 about. He admits that he would like to have them back but
20 he doesn't own them. So, you know, the properties that
21 we've taken, like the house, he wants back but he doesn't
22 own it.

23 Q Have you, since the date that the plea was
24 entered, spoken to other witnesses or cooperating
25 Defendants?

110

1 A Have I spoke to any?

2 Q Yes.

3 A Yes, I have.

4 Q And have any of them expressed fear of Carpenter?

5 A Yes, sir, they have.

6 Q Would you name some of the names of witnesses
7 you've spoken to who expressed physical fear of carpenter?

8 Mr. Lofton: Your Honor, we're gonna object to
9 that, because that would be hearsay. If he wants to bring
10 witnesses in that indicate they have fear of Mr.
11 Carpenter, that's fine.

12 Court: I would not wish any hearsay.

13 Q That's all we have at this time.

14 CROSS EXAMINATION BY MR. LOFTON:

15 Q Mr. Gordon, as you indicated earlier, of course
16 you've been involved in this investigation for a good
17 period of time, correct?

18 A Yes, sir, I have.

19 Q And there were a number of Defendants who entered
20 pleas of guilty in connection with the two cases, the
21 cocaine case as well as the marijuana case, is that
22 correct?

23 A Yes, sir.

24 Q As a matter of fact, there was some 16 Defendants
25 ya'll entered into -- ya'll being the State of South

///

1 Carolina -- who you entered into plea agreements, is that
2 correct?

3 A Yeah, I think that's correct.

4 Q May I just hand you these and if you will just
5 run through those and see if those are the plea agreements
6 that were entered into, copies furnished by the State?

7 A You want me to call the names or just look at
8 them?

9 Q If you'd just look at them and verify that those
10 are the copies. That's all I need.

11 Mr. Kittrell: Your Honor, we'd stipulate that
12 various Defendants entered into plea agreements.

13 Court: The record will reflect that there were
14 -- how many of them?

15 Q Sixteen. What I'd like to do for the purposes of
16 this hearing is make these sixteen, which are copies of
17 the ones that Mr. Kittrell furnished to me, a part of this
18 record.

19 Court: Yes, sir, I would permit that.

20 Mr. Kittrell: Again, Your Honor, those are legal
21 documents. I don't know what ---

22 Q I'm not going to ask him any specific questions
23 about them.

24 Court: He just wants to make them a part of the
25 record and I'll permit that. Defendant's Exhibit #1.

112

1 (COPIES OF PLEA AGREEMENTS ENTERED IN EVIDENCE AS
2 DEFENDANT'S EXHIBIT #1.)

3 Q Now, Mr. Gordon, you are familiar with the fact
4 that in each and every one of those plea agreements one of
5 the provisos was that each individual Defendant, each one
6 of the sixteen, was required -- if you or Mr. Kittrell or
7 someone else on behalf of the State selected them to be
8 given a polygraph, that that was part of the deal, correct?

9 Mr. Kittrell: Your Honor, I would object to
10 this. I do not know that the proper foundation has been
11 laid.

12 Court: No, sir, this is cross-examination. I
13 don't know where he's going but I'll permit this.

14 Mr. Kittrell: If I may, he's asking the witness
15 to make a comment on legal documents that he may or may
16 not have read. I do not know that Mr. Gordon has read the
17 plea agreements.

18 Court: Well, let's let him go forward with his
19 cross-examination.

20 A What was the question?

21 Q My question was, was he aware of the fact -- and
22 I'll hand them to him, Exhibit #1, which are the ---

23 Court: No. To save time just ask him. I think
24 he's familiar with all of these. You're familiar with all
25 of these plea agreements, aren't you?

113

1 A I think I am, Your Honor.

2 Court: Well, no need in wasting time. Go ahead.

3 Q Are you or are you not familiar with the fact
4 that each one of those sixteen plea agreements, the
5 Defendant who signed that plea agreement and entered into
6 his plea agreement with the State, as a part of that plea
7 agreement was required, if the State selected, to take a
8 polygraph and successfully complete one before his plea
9 agreement would be, in fact, a valid plea agreement?

10 A If the State requested a polygraph, that's
11 correct, sir.

12 Q And the State, either you or Mr. Kittrell or
13 somebody with the State, made the decision as to which
14 Defendants would be polygraphed, is that correct?

15 A That's correct.

16 Q And you are aware, are you not, sir, that a
17 number of Defendants were not polygraphed?

18 A That's correct.

19 Q All right, now, in addition to a number of
20 Defendants, of those sixteen Defendants not being
21 polygraphed, there are also a number of witnesses who
22 interviewed during the course of your investigation that
23 were either granted immunity or made some sort of an
24 agreement with not to prosecute that also were not
25 polygraphed, correct?

114

1 A I don't know of any that was not polygraphed that
2 did that. I don't think that's a correct statement is
3 what I'm saying.

4 Q Let me ask you this, was Raymond Carpenter
5 polygraphed?

6 A Yes, sir, he was.

7 Q And did Mr. Carpenter, Raymond Carpenter,
8 successfully complete the polygraph?

9 A To my knowledge, yes, sir, he did.

10 Q Now, you would not be familiar with that? The
11 polygraph examiner would have to be the individual to tell
12 us that, sir?

13 A That's correct. That's why I said to my
14 knowledge that's correct.

15 Q Now, according to your testimony, you transported
16 Mr. Carpenter a number of times and ya'll have had various
17 conversations, correct?

18 A That's correct, sir.

19 Q As a matter of fact, Mr. Gordon, over a period of
20 the last number of months that you've transported Mr.
21 Carpenter, you and he have been in sparring contests,
22 verbal sparring contests on almost every occasion you've
23 transferred him, correct?

24 A Define sparring. I'm not being a smart aleck,
25 but if you're saying if we had hard feelings and that type

115

1 thing, no, sir.

2 Q No, sir, I don't mean to mislead you. There was
3 baiting back and forth. You baiting him, him baiting
4 you. Each one of you trying to get information from the
5 other. Just various and sundry things that ya'll did, the
6 games that you played, I guess, is what I'm trying to say.

7 A Believe it or not, sir, and I'll say it in open
8 court, I told him no later than yesterday he's got a
9 personality that you can begin to like. I never told Mr.
10 Carpenter after his plea agreement and so forth, anything
11 that I was not sincere in. I begged Mr. Carpenter and
12 even at one time I asked you, sir, please talk to him. I
13 don't want to testify against him again. Go ahead and get
14 this behind him because he's gone get this sentence
15 stacked on him and he doesn't need that. He was under the
16 impression -- he's told me several times on this 25 years
17 that the judge can throw at me I don't have to pull but
18 three of it, I've already read the law. I told him he
19 needs to stay away from jailhouse lawyers and start
20 complying, but I really had a good report with him and
21 advised him as honestly as I know how, because I really
22 started liking him.

23 Q I understand that, and I think ya'll had
24 developed some sort of report, but there isn't any
25 question from the standpoint of these various trips back

116

1 and forth, there were these little sparring matches or
2 baiting matches or whatever?

3 A If you mean arguing, he was trying to tell me
4 what he shouldn't do and I was trying to say that he
5 should, yeah, but as far as trying to trick him, I wasn't.

6 Q I'm not saying you were trying to trick him.

7 Court: I think he's trying to say a little
8 mouthing back and forth.

9 A Yes, sir, we'd mouth back and forth.

10 Q Yes, sir, Judge, thank you. I appreciate that.
11 Now, on one of these occasions, at some point in time, Mr.
12 Carpenter told you he could escape at any time?

13 A Correct.

14 Q And the only reason, according to your testimony,
15 he was staying around, because of his sick mother and so
16 forth, correct?

17 A That's correct.

18 Q Now, will you concede, will you not, Mr. Gordon,
19 that if someone planned on escaping from the police he
20 would not normally tell the police he was gone do that,
21 would he?

22 A I don't think so.

23 Q Now, just so there won't be any misunderstanding,
24 as I recall -- and you correct me if I'm wrong -- at some
25 point in time after Mr. Carpenter was debriefed --and he

117

1 was debriefed on at least two occasions, maybe three,
2 correct?

3 A That's correct.

4 Q And I believe one of them we did one night.

5 A Let me clarify that a little. He was partially
6 debriefed, or started debriefing. To my knowledge we only
7 had one what we considered a complete debriefing, to the
8 best of our ability, but he was brought there for that on
9 two or three occasions.

10 Q As a matter of fact, I think on the first
11 occasion, which was -- and if I'm incorrect you correct me
12 -- which was the night before he entered his plea, back in
13 April. I believe you and Mr. Logan and myself were down
14 at the Darlington County Jail for some three or four hours.

15 A That's correct.

16 Q And then sometime after that he was brought to
17 Columbia for a polygraph.

18 A After his plea agreement, that's correct.

19 Q After he entered his plea.

20 A That's correct.

21 Q And I was out of town and he indicated that he
22 did not want to take the polygraph unless I was there.

23 A That was the second time. The first time you
24 were there on the debriefing and I'm assuming Agent Logan
25 was going to run the polygraph after the debriefing but it

118

1 never got that far because of lack of cooperation.

2 Mr. Kittrell: Your Honor, if I could interject,
3 I believe the debriefing the witness is speaking of, the
4 initial one, occurred on April 6 and the second one with
5 Mr. Logan was April 13.

6 Court: Go ahead.

7 Q The only point I'm trying to make, Mr. Gordon,
8 and I don't know that it has any relevance, other than I
9 wanted the Court to understand there was only one time
10 when Mr. Carpenter refused to take the polygraph, and that
11 was because I was not present.

12 A Refused to take the polygraph, that's correct.
13 But he did not cooperate one time before that.

14 Q I just wanted to make sure the record was clear
15 that I was unavailable and I subsequently contacted Mr.
16 Kittrell or you or someone and we later did arrange a
17 polygraph which he ultimately took.

18 A That's correct.

19 Q Now, in addition to those things, you indicated
20 that Mr. Carpenter, or through your investigation ya'll
21 learned the name of an individual named Lawyer Boy,
22 correct?

23 A That's correct.

24 Q Now, who, in the course of this investigation,
25 furnished the name of Lawyer Boy?

119

1 A I don't recall who, initially, but probably in
2 the transcripts you can read there that eight or ten of
3 his co-defendants, or six or eight of his co-defendants
4 have referred to him frequently in some of the transcripts.

5 Court: What kind of transcript, is that the
6 grand jury transcript you're talking about?

7 A That's correct, Your Honor, which was made
8 available.

9 Q Of those individuals, and I don't know who they
10 are at this time, so you'll have to help me, but of those
11 individuals who have identified this individual as the
12 Lawyer Boy that Mr. Carpenter should have knowledge of,
13 first of all who were they and, secondly, which ones of
14 those were polygraphed as to whether or not there was an
15 individual named Lawyer Boy and whether or not Mr.
16 Carpenter had any involvement with them?

17 A All right, so what you're asking of me is to call
18 names of the ones that I know?

19 Q Yes, sir.

20 A All right, one Jessie Smith. He was
21 polygraphed. Kenny Taylor, I think he was polygraphed.

22 Q Well, let me just interrupt you right there. My
23 record reflects that Mr. Taylor was not polygraphed.

24 A That could be correct.

25 Q So Mr. Taylor was not polygraphed.

120

1 A Let me further explain. I'm not familiar with
2 everybody that was.

3 Q But if I were to tell you based on the records
4 they furnished to me Mr. Taylor was not polygraphed, you
5 would not take exception to that?

6 A I would not deny it. And, like I say, it goes on
7 and on. Pee Wee Freeman.

8 Q And Mr. Freeman was not polygraphed?

9 A Like I say, I don't think so, but I could stand
10 corrected.

11 Q If I would tell you that based on the records
12 furnished to me Mr. Freeman was not polygraphed you would
13 not take exception?

14 A I would not take exception, no. My mind is just
15 sort of blank. If you'll give me a list of the ones that
16 I interviewed.

17 Q I'll give you a copy of the indictments, which
18 will give you a list of the names.

19 A That's what I need.

20 Q So what you're telling the court, that Mr.
21 Carpenter has refused to cooperate about somebody named
22 Lawyer Boy. Three people have mentioned his name in
23 connection with your investigation?

24 A That's correct.

25 Q And two of those have not been polygraphed?

121

1 A That's correct.

2 Q And only one of them, James Earl Smith, has been
3 polygraphed, correct?

4 A That's correct.

5 Q And he was polygraphed on two separate
6 occasions. Are you familiar with that?

7 A Yes, sir, I am.

8 Q And on the first occasion he failed the polygraph
9 test, do you recall that?

10 A No, I'm not familiar with that.

11 Q If I were to tell you, based on the information
12 furnished to us ---

13 A I will not deny that, sir. What I'm saying is,
14 I'm not familiar with it.

15 Q So what you're telling the Court is that Mr.
16 Carpenter has refused to cooperate in connection with an
17 individual by the name of Lawyer Boy, based on the
18 information from three co-defendants, two of which have
19 not even been polygraphed as to whether or not the
20 information is accurate?

21 A That's correct. But may I further say, he
22 refuses today to even go into an additional plea agreement
23 or at least let his plea agreement stand, without this, if
24 we would agree to not make him identify Lawyer Boy today,
25 sir. That's my understanding right now. Now, I may stand

1 corrected.

2 Q That's incorrect, because Mr. Kittrell would not
3 agree with that.

4 A All right, I may stand corrected, but if he would
5 identify today -- but I think that was the one stipulation
6 in it today.

7 Q Your Honor, of course, we would ask that that be
8 stricken, because the plea negotiations doesn't have
9 anything to do with whether or not he's cooperated. What
10 we're talking about now is whether or not they have
11 sufficient reason to believe he has not cooperated and has
12 furnished all the information in connection with his plea
13 agreement.

14 There was an attempt earlier, just so Your Honor
15 will know, to furnish certain information to the State,
16 under certain conditions.

17 Court: When was this now?

18 Q Today. Which, Mr. Kittrell indicated he did not
19 want to do. But any reference to that, I would ask, Your
20 Honor, that that not be considered by the Court, because
21 it would be just like plea discussions, which are not
22 relevant.

23 Court: I would strike that portion.

24 Mr. Kittrell: In fairness to the Defendant, we
25 came in this morning and approached his counsel to offer a

123

1 plea if he would fully cooperate.

2 Court: We don't need to get into that. I want
3 those matters, if any, that occurred prior to today.

4 Mr. Kittrell: I understand he spoke to the
5 Defendant and all the discussion was between the two
6 lawyers.

7 Q That's correct, Your Honor.

8 A And I apologize.

9 Court: That's okay. Go ahead.

10 Q So back to my point, this individual who has been
11 identified by three people as Lawyer Boy, who has some
12 contact or association with Mr. Carpenter, two of the
13 three Defendants have not been polygraphed and one has,
14 correct?

15 A That's correct. And may I further answer this.
16 We have identified Lawyer Boy. Lawyer Boy is an
17 individual at the beach, Myrtle Beach, South Carolina,
18 Robert Baker, that we have identified, that we know on one
19 occasion even went his bond at the jail up there. So we
20 have not only done that, we have identified him and I may
21 not should have said that because he may still stand to be
22 indicted. But we have identified him and I know that he
23 has associated with him. We just wanted him to cooperate
24 and give us that and he wouldn't do so.

25 Q So based on the information that we have talked

124

1 about ---

2 A That's correct, sir. You're correct.

3 Q If you had sufficient information to indict Mr.
4 Baker, of course, that would be something that you would
5 present to the grand jury, correct?

6 A That is correct.

7 Q But my point is, to say that Mr. Carpenter has
8 refused to cooperate in connection with identifying Lawyer
9 Boy or Mr. Baker, or tell you anything about him, other
10 than you knowing that he is an associate because he posted
11 his bond on one occasion, that doesn't, in fact, make him
12 a criminal, correct?

13 A That's correct, sir. All we wanted him to do was
14 to identify him.

15 Q Whether or not he knows of any illegal activities
16 of Mr. Baker, you, Mr. Gordon, cannot say, can you?

17 A No, sir.

18 Q All right. That's the point I was trying to
19 make. The next point that you made concerned the stashing
20 of large quantities or has stashed large quantities of
21 drugs with a fellow named Hart or Harpe?

22 A That's correct, sir.

23 Q Now, who told you about this individual named
24 Hart or Harpe?

25 A Bobby Eugene Horne, and then later Mr. Carpenter

125

1 himself.

2 Q All right, sir. Now, did Mr. Horne indicate to
3 you ---

4 A And let me correct that, sir, also. It was told
5 to investigating officers, which as far as Horne telling
6 me personally, direct, he did not. He was telling it to
7 the agents of this case, so I may should have explained
8 it, but that's correct.

9 Q Mr. Horne, is he the only individual that has
10 mentioned the individual named Hart or Harpe?

11 A No, sir.

12 Q All right, who else?

13 A Pee Wee Freeman, Jessie Smith.

14 Q And, here again, Mr. Freeman has not been
15 polygraphed concerning the information he furnished,
16 correct?

17 A Mr. Smith has been polygraphed. Did you see
18 Freeman or Smith?

19 Q I said Freeman.

20 A Oh, excuse me. If you say so, I'll agree, sir.
21 I don't take exception to that.

22 Mr. Kittrell: Your Honor, if I could interrupt,
23 for the record, Cynthia Pernell has been polygraphed,
24 Patricia Rivers ---

25 Q Your Honor, he's not testifying.

126

1 Mr. Kittrell: Your Honor, he doesn't know who's
2 been polygraphed. I'm just ---

3 Court: Well, I thought that both of you ---

4 Q Well, that's fine. If he wants to stipulate as
5 to who's been polygraphed I don't have a problem with
6 that. Go ahead.

7 Mr. Kittrell: Okay. Cynthia Pernell, Patricia
8 Rivers, Bobby Eugene Horne, James Plyler, Shirley Horne,
9 Mr. Smith and Charles Carpenter.

10 Court: I thought, Mr. Lofton, that you,
11 yourself, had referred to that a moment ago.

12 Q I apologize, Your Honor. I thought he was
13 getting ready to -- no problem.

14 Court: Go ahead.

15 Q So, here again, as to what knowledge Mr.
16 Carpenter may have about this, you don't know, correct?

17 A He admitted to me that he stashed the marijuana
18 there. He just would not tell me who he was or what his
19 name was, other than Hart.

20 Q Isn't it a fact that what he told you, Mr.
21 Gordon, was that all he knew the individual by was Hart?

22 A And he took it there and has been there on
23 several occasions, but refused to take me back there. He
24 said, if you'll put me and my family under the federal
25 protection program I'll take you back there, but until you

127

1 do, I'm telling you no.

2 Q But the point I'm trying to make is, as a matter
3 of fact, Mr. Carpenter did tell you what he knew about
4 this fellow Hart or Harpe?

5 A No, sir. That's what I'm telling you. He won't
6 tell me where he lives and if, in fact, he knows his name
7 he won't tell me his name. I'll tell you what, I have
8 since identified him. I'd prefer not to call it in court,
9 but I've identified him and know that he does know him.

10 Q You know that he knows him and he admitted to you
11 he knew him and he also admitted to you that he had
12 stashed drugs there, isn't that correct?

13 A That's correct. He's admitted, on and on, you
14 know, even how he met him and everything.

15 Q That's the point I'm trying to make, Mr. Gordon.
16 You indicated to the Court earlier that you had
17 information that Mr. Carpenter had stashed large
18 quantities of drugs with this fellow Hart and that Mr.
19 Carpenter had failed to identify Mr. Hart when, in fact,
20 Mr. Carpenter has identified him, correct?

21 A No, sir, he has not. Hart is not his real name
22 and he won't show me where he lives. That's not
23 identifying him. If he just calls the name Grass or Hart,
24 you know any name, that's not helping the investigation.
25 He just tell me -- you know, I've got no way to find out

128

1 any of this. All I wanted him to do was tell me his name
2 and where he lived. I'll go from there. But he'll tell
3 me of the activities in numerous cases, just like I told
4 you before -- it goes on and on. He calls Tony, he calls
5 a Frank, but Tony and Frank, I can't identify. But he
6 won't tell the last names. He'll tell what he did and
7 call the names, but that's not completely doing what we're
8 asking.

9 Q In your opinion.

10 A No. That's what we're telling you.

11 Q That's your opinion, is it not, Mr. Gordon? He
12 indicated to you he knew the individual only as Hart or
13 Harpe, did he not?

14 A Maybe I misunderstood what you asked me. You
15 said that he did cooperate and identify these people. He
16 did not identify these people. He's capable of giving me
17 their home address so I can go the their mailbox, but he
18 would not do that. And I did not know how to do it, and
19 still don't on some of them.

20 Q Mr. Gordon, my question to you was, he indicated
21 to you that he knew the individual by the name of Hart or
22 Harpe and that's the only way he knew him, correct?

23 A That part is correct. Up to that point.

24 Q All right. Now, it's not uncommon, is it, in the
25 drug business for people not to know people's last name,

129

1 not to know their real name but they're known by other
2 names?

3 A I don't dispute that, sir. I don't disagree with
4 that. If you'll break it down like that, I'll answer your
5 questions that way. I'm not being smart. Please don't
6 take it that way, but when you say he fully cooperated, if
7 I know where he lives and he won't show me, he hasn't
8 cooperated. And that's not my opinion -- you know, that's
9 the way it is.

10 Q My point is that he has furnished you certain
11 information, but in your opinion he hasn't given you
12 everything he knows?

13 A Mine and the State's, the Grand Jury's.

14 Court: Let me ask you, what makes you think that
15 he knows where this individual is?

16 A He told me he took the dope there, Your Honor.

17 Q He also told you he didn't know how to get back
18 there too, did he not?

19 A Yes, sir, and he told me that he couldn't take me
20 back there but later told me he would take me there if
21 we'd put him under the federal protection program. So
22 that's the way he left it.

23 Q But he originally told you he didn't know how to
24 get back there, that he'd been there on one occasion?

25 A Yeah, after he admitted knowing him.

130

1 Q All right. So, here again, based on what these
2 other people have said and what you believe, you don't
3 think he's fully cooperated because you think there is
4 additional information that he may have?

5 A I certainly don't.

6 Q All right. But it's not that he didn't tell you
7 about Hart or Harpe after you asked him about it, isn't
8 that correct?

9 A I don't want to agree with you just to keep from
10 arguing, but I don't want to argue with you either. He
11 did not tell me who Hart was. I asked him did he know
12 Hart. He denied it. He finally owned up to knowing Hart,
13 but that's all. He'd tell me about the dope deals but he
14 would not tell me who Hart was or where Hart lived. And,
15 you know, if I'm not answering it properly, I'm sorry but,
16 you know.

17 Q I'll leave it there, other than to say he told
18 you he knew this individual by the name of Hart or Harpe
19 and that was how he knew him?

20 A That's correct.

21 Q All right. Now, you also talked about you had
22 information that he did certain deals up in North
23 Carolina, correct?

24 A That's correct, sir.

25 Q And didn't bother to tell you about it?

131

1 A That's correct, sir.

2 Q And this information came from what witnesses
3 dealing with the deals he had done in North Carolina?

4 A Your Honor, at this time there is an
5 investigation going on now and I think it would -- it
6 would inhibit it if I -- I mean, I need to withhold
7 information because it's going on now in North Carolina
8 concerning it.

9 Q Your Honor, I'm not asking to divulge any
10 investigation. I'm asking him to divulge the name of the
11 individuals who say Mr. Carpenter was involved in certain
12 deals in North Carolina that Mr. Carpenter has failed to
13 tell him about.

14 A If I do that I'll be telling ---

15 Court: What's your position on that?

16 Mr. Kittrell: Your Honor, I think it's dangerous
17 to taint any ongoing investigation.

18 Court: Yes, sir, I'd decline to do that. It's
19 an ongoing investigation, it may impede that. But,
20 equally important, it may publish some names of
21 individuals who later prove to be innocent, and I would
22 not agree to do that.

23 Q Well, Your Honor, the problem that I've got with
24 that ruling is, how can we refute, respond to an
25 allegation that he's withheld information about deals in

132

1 North Carolina if we don't know what he's talking about?

2 Court: What's your answer to that?

3 Mr. Kittrell: Your Honor, I think that would go
4 to the weight of the testimony and not the admissibility
5 and you, of course, must weigh it if he's not provided
6 full and complete ---

7 Court: Well, I think he can give you sufficient
8 information to satisfy your purpose and I'm not going to
9 require names of those that are currently being
10 investigated for two reasons. One is it may impede that
11 investigation; two, it may disclose names of people that
12 are later found to be innocent; three, if they are engaged
13 in it, it may jeopardize those particular individuals, and
14 I do not think that the ends of justice require that.
15 Now, I understand your concerns, but balancing it, I think
16 the prejudice would outweigh considerably any beneficial
17 results on this one issue.

18 Q Your Honor, I'm not asking him to divulge the
19 name of any one under investigation in North Carolina.
20 What I'm asking him to do is, in connection with Carpenter
21 being involved in some case that I assume has long-since
22 been over, because Mr. Carpenter has been in jail for an
23 awful long period of time. Apparently, he has certain
24 information from somebody that Mr. Carpenter was
25 involved. What I'm trying to do is establish who the

133

1 people are that are saying Mr. Carpenter is involved in
2 these things. The problem we've got is -- and that's what
3 I tried to tell Your Honor to start with -- even though
4 they say they're not dealing with the polygraph -- and
5 Your Honor can see the polygraph becomes a very important
6 part of what they are not saying that Mr. Carpenter hasn't
7 fully cooperated with, because they are using evidence
8 furnished by individuals who are not polygraphed. So
9 they're assuming that those people told the truth and
10 that's what's got us in the position that we're in today.

11 Court: As I indicated earlier, and I think the
12 State would concede, that the failure to pass the
13 polygraph, if there be a failure, is a relatively minor
14 part of their "allegations" with regard to his refusal to
15 cooperate. I still am not going to require this witness
16 to designate the names of individuals who are presently
17 under investigation, may be proved to be innocent. And by
18 their identification they'd get them into trouble. I'm
19 not going to require that. To the extent that you can,
20 consistent with my ruling, Mr. Gordon, answer him. But
21 I'm not going to require you to disclose names of people
22 merely under suspicion.

23 A This individual that gave this was with Carpenter
24 when the drug deal was done in North Carolina.

25 Court: Without naming, you give him sufficient

134

1 information to where they can identify who you're talking
2 about.

3 A This drug deal transpired ---

4 Mr. Kittrell: To protect the investigation I'm
5 going to have that portion at this time withdrawn from
6 consideration.

7 Court: Sir?

8 Mr. Kittrell: I'm willing to have that alleged
9 transaction stricken in order to protect the
10 investigation. I don't think it's relevant who spoke to
11 ---

12 Court: If you're withdrawing that particular
13 allegation I'll permit you to do that. I'm just not going
14 to let -- Mr. Lofton, you understand the reasons.

15 Q I understand, Your Honor, and I don't have any
16 problem with that. The only problem that I have is, of
17 course ---

18 Court: I'm going to withdraw from consideration
19 that allegation. And I think his position is probably the
20 correct one. The State alleges that he failed to
21 cooperate in that he did say "X" and then he failed to
22 tell him who "X" is and there's no way he could refute
23 it. So that puts him in an untenable position, too.

24 Mr. Kittrell: We'd withdraw it, Your Honor.

25 Court: All right, it's withdrawn.

135

1 Q In connection with the other deal that you made
2 reference to in a broad category of deals in other parts
3 of the State, now was that the State of South Carolina or
4 the State of North Carolina?

5 A Let me think just one second of the other deals.
6 They were in the transcripts, to the best of my
7 knowledge. One of which occurred on the beach.

8 Q What beach?

9 A I don't know whether it's North Carolina or South
10 Carolina but it was near North Myrtle Beach, but you know
11 that's right on the line.

12 Q When did this supposedly occur?

13 A It was three-four years ago, sir. It was the
14 off-loading of a boat.

15 Q Who was supposed to have been involved in the
16 off-loading of this boat?

17 A I need the transcript. If it was made available
18 to ya'll, I need that transcript to look on that to see
19 the exact date.

20 Q I don't recall seeing that in there.

21 A And I may stand corrected ---

22 Mr. Kittrell: Your Honor, I have made
23 transcripts of all of them.

24 A And I will, personally, withdraw that one since I
25 can't specify which it was, but I know that we had that

136

1 testimony from one of the witnesses that we interviewed.
2 And I'd need that transcript. And I'll withdraw that
3 myself, sir.

4 Court: I want to know, Mr. Lofton, exactly what
5 he alleges, that there was a threat made in this courtroom
6 to one Kenny Taylor.

7 Q That's where I'm going next.

8 Court: All right, sir, I want to hear about that
9 one, because that was not called to my attention at that
10 time or I'd have dealt with it.

11 Q Well, the first time that I've heard of it was
12 today, I think, too, Your Honor.

13 Mr. Kittrell: It's in the copy of the statement
14 taken by the officers.

15 Q I apologize. We got a copy of it.

16 Court: All right.

17 A In compliance to that last question may I ---

18 Court: The affidavits, have I been supplied a
19 copy of them?

20 Mr. Kittrell: No, Your Honor. We had statements
21 taken from the cooperating co-defendants who stated they
22 had been threatened by Carpenter and provided copies from
23 those four individuals to the Defendant.

24 Court: But those copies are not in the brief.

25 Mr. Kittrell: Your Honor, I don't think that was

137

1 a part of the record.

2 Q Well, we would object to those being put in the
3 record. They're not affidavits, they're just statements.

4 Court: Well, I'll rule on them as they come up.

5 Q Mr. Gordon, you indicated earlier in your
6 testimony that when we were here in June, June 4, I
7 believe it was, that you heard Mr. Carpenter use the word,
8 dead, you were standing where I'm standing and all of the
9 co-defendants and Mr. Carpenter were in the jurybox?

10 A Kenny Ray Taylor had gone, I think, to the
11 bathroom -- that's about the only thing we'd let them
12 leave for. Was walking back down. Mr. Carpenter was
13 sitting in that third chair down, there. As Kenny Ray
14 Taylor walked by him he said something to the effect,
15 you're dead, or a dead man -- I heard the word plainly,
16 dead. Taylor turned around and they were just about in a
17 fight and I had to approach them and threaten to remove
18 Carpenter from the room and, of course, Taylor was in an
19 uproar about he told him he was a dead man.

20 Q You, of course, did not hear any threat. All you
21 heard was the word, dead, correct? That was your
22 testimony earlier, that you heard the word, dead.

23 A Dead, directed to Kenny Taylor.

24 Q What was said -- what you know about what was
25 said to Kenny Taylor is what Kenny Taylor told you after

138

1 the fact, correct?

2 A That is correct. And seeing him fly up in an
3 uproar when he told him that. Whatever dead meant to him
4 made him mad -- I'll promise you that.

5 Q All right. What, if any threat was made, you
6 really can't tell the court, because all you heard was the
7 word, dead, correct?

8 A That's correct, sir.

9 Q All right. Now, you also testified about a
10 number of assets, which you contend Mr. Carpenter has
11 failed, in his plea agreement, to turn over to the State
12 of South Carolina. The first asset you mentioned was the
13 house, which you referred to as a compound, and that is a
14 piece of property that is currently in civil litigation
15 and Mr. Carpenter denies that it had anything to do with
16 any illegal drug activity, isn't that correct?

17 A He denies that; that's correct. He denies owning
18 it.

19 Q All right, sir. Vehicles, under number two, you
20 mentioned a 1984 van that was in or is located in Mr.
21 Carpenter's brother's garage right now, correct -- or was
22 last week?

23 A Right, sir. That van was the one that the dope
24 deal was done in, that's correct, sir.

25 Q If that be the case, Mr. Gordon, why has not that

1 van been seized if you have evidence that a drug deal took
2 place in that particular van?

3 Mr. Kittrell: Your Honor, if I may interject for
4 the record, we have been stayed the proceeding of civil
5 forfeiture matters and filing Complaints and the like,
6 Your Honor.

7 Q That's not correct, Your Honor. We entered into
8 a stay order with the Court on pending civil litigation.
9 The cases have already been filed. No one ever stayed the
10 State, to my knowledge, from seizing any property, be it
11 vehicles or real estate, that they had any information was
12 connected in any way with any illegal drug activity.

13 Q It's my understanding that we were going to stop
14 the proceedings in civil court of matters arising out of
15 this investigation.

16 Court: That was my understanding, too. And I
17 think there's an order out there to that effect.

18 Q No, sir. That's not what that order says.

19 Court: Well, what the facts are, nobody has
20 objected to in that regard.

21 Q Well, Your Honor, I would respectfully say to the
22 Court, I cannot believe that the State of South Carolina
23 believed that there were assets of Mr. Carpenter or anyone
24 else involved in illegal drug trafficking that was subject
25 to seizure, that could be dissipated, and they knew about

140

1 it and they weren't doing anything to seize it, then
2 they'd be derelict in their job, so I don't believe and I
3 would respectfully submit to the Court that for them to
4 say that there's an order out there and that order only
5 provides, Your Honor, that those matters that they had
6 seized and filed civil litigation against.

7 Mr. Kittrell: My understanding, Your Honor, is
8 simply that there was a stay on all civil forfeiture
9 proceedings. At that time we may not have had all
10 knowledge about all of the vehicles and all of the pieces
11 of property owned by this Defendant in the course of the
12 investigation.

13 Court: I understood it to be a stay and I would
14 not have permitted him to go forward based on that order.

15 Mr. Kittrell: In fact, I spoke to Mr. Lofton at
16 one time and he said there was a stay order and I did not
17 procedure with the forfeitures, Your Honor.

18 Court: That was my understanding.

19 Q Mr. Gordon, knowing, based on your information
20 that you've told the Court about there is an '84 van in
21 Mr. Carpenter's brother's garage that you say is subject
22 to seizure for violation of the drug laws of this State,
23 have you, or anyone on behalf of the State, done anything
24 to petition the Court or force the Court to indicate that
25 that particular item of property is there and it needs to

141

1 be seized or needed to be seized before it's disposed of?

2 A I can't tell you what ---

3 Mr. Kittrell: Your Honor, that's a legal matter
4 and I think we've just touched upon it.

5 Court: Let him answer if he knows. Go ahead.

6 A I don't handle the seizure work for the Grand
7 Jury. That is done separate from me altogether. All I do
8 is furnish the information that we can corroborate that
9 drug deals have been done in that vehicle and I can go so
10 far as to say that it's been removed and to my knowledge,
11 not back in South Carolina since.

12 Q My point is -- my question was, to your knowledge
13 has anyone, on behalf of the State, approached the Court
14 about seizing that vehicle?

15 A I have no knowledge of any of the seizure work,
16 sir, involving that aspect of it.

17 Q All right. The third item you mentioned in the
18 way of assets was a Blazer. Where is this Blazer located?

19 A The last I saw this Blazer it was in Wadesboro,
20 North Carolina at Carpenter's Garage.

21 Q And it has not been seized by any law enforcement
22 agency to your knowledge in connection with any illegal
23 drug trafficking?

24 Mr. Kittrell: Your Honor, we will concede that
25 there's been no seizure and I've stated why.

142

1 Additionally, it's in North Carolina and we don't have any
2 jurisdiction. These are legal matters, not relevant to
3 the cross-examination of this witness.

4 Q Your Honor, they are relevant, because the State
5 has come in and they've made these broad accusations
6 against Mr. Carpenter, that he's refused to turn over
7 assets that were acquired in illegal drug proceedings, Your
8 Honor.

9 A Do you want me to answer that?

10 Court: When we get through with this witness --
11 obviously, we're gone be here a while and that's as it
12 should be -- we'll take a break for lunch and then come
13 back.

14 A Do you want me to answer that?

15 Court: Yes, sir.

16 A These vehicles have been in North Carolina. All
17 of this property is taken to North Carolina. We have
18 information where it was taken. Mr. Carpenter denies even
19 having it or where it is at and so forth. But this stuff
20 -- vehicles, furniture, fencing, tractors, was all taken
21 by the members of his family and friends and taken into
22 North Carolina and, to my knowledge, no one else has seen
23 it. It is being hid, according to our information.

24 Q All right. Let me direct your attention
25 specifically to the furniture, Mr. Gordon. Were you aware

143

1 that shortly after the furniture was removed from the
2 compound that I advised the State Grand Jury that the
3 property was in North Carolina and at whatever appropriate
4 time we were told to put it back in the compound that Mr.
5 Carpenter's brother would bring the property down and put
6 it back in the compound or whatever ya'll wanted it?

7 A You said you'd bring it back but it's not there
8 yet.

9 Q Did anyone ever approach me and say, we want it
10 delivered on such and such a date or were any arrangements
11 ever made by anyone to have that property put back into
12 the compound?

13 A If you'll let me testify to hearsay, yes, sir, I
14 was told that you were talked to.

15 Q That I was told to put it there on a particular
16 occasion?

17 A No, not the date. I'm not saying that. But I
18 know that I've been told by people here today in the
19 courtroom, including Mr. Kittrell and them, that you've
20 been asked to have them to bring it back.

21 Q Tell me who told you that we were directed or
22 told to bring the property back.

23 A Not directed; asked.

24 Q Okay, asked to bring the property back and
25 refused to do it.

144

1 A Butch Knight.

2 Q All right. You, additionally, mentioned a
3 four-wheeler vehicle. That vehicle is located where?

4 A I don't know, sir.

5 Q Here again, this information that you have about
6 these various vehicles or furniture or boats or whatever,
7 this is information that you've acquired from other
8 witnesses during the course of your investigation, correct?

9 A I saw them. I mean, they were there at the
10 house, that four-wheeler, when we searched it.

11 Q The fact that they allegedly are involved in some
12 sort of illegal drug activity comes from other witnesses,
13 correct?

14 A That is correct, sir.

15 Q And these various witnesses that have furnished
16 you this information -- for instance, with reference to
17 the '84 van, has that particular witness been polygraphed
18 to determine whether or not the information they furnished
19 you is that van was used in some sort of illegal narcotics
20 transaction, has that witness been polygraphed?

21 A One of them has.

22 Q All right, sir, who was that?

23 A Fireball.

24 Q Okay. And there was a specific question asked
25 about him and that particular van?

145

1 A That's the deal that Hart and Pee Wee Freeman and
2 he did in the van.

3 Q I'm sorry, I didn't follow you.

4 A The dope that was stashed at Hart's house, the
5 guy he won't identify, that was the van that Fireball or
6 Charles told us that he and Pee Wee Freeman -- and, of
7 course, I don't recall whether he told us Hart was along
8 or not, but we found out to be Hart, and I think if you'll
9 read the debriefing there, that he did say that Hart was
10 with him. But they hauled it in the van.

11 Q And he was not specifically polygraphed about
12 that particular van, was he?

13 A He gave it in the debriefing prior to -- I'm not
14 in the polygraph room, sir. You know, I don't know that.

15 Q Mr. Gordon, you're testifying about an awful lot
16 of things that sound bad but you really don't have any
17 direct knowledge of, isn't that correct? He was never
18 polygraphed about that '84 van, was he?

19 A May I explain that?

20 Q Yes, sir.

21 A All right. I debriefed with the polygraph
22 operator, J. B. Rowland and Special Agent, who is a
23 renowned polygraph operator, if I may brag on him, Pete
24 Logan, and this information was brought up during that,
25 during the polygraphing. I don't know what question they

146

1 asked. So, you know -- and I still don't know.

2 Q All right, so, again, as to this particular
3 vehicle, we don't have any other, other than you saying
4 that he was asked about it and was polygraphed, you don't
5 know whether he was asked about that particular van on the
6 polygraph. That is what you based your opinion on that he
7 hadn't cooperated and turned over a van to you, correct?

8 A That's part of it. The other part is, he told us
9 about it and in interviewing some of these other people
10 they corroborate what he said.

11 Q All right, and who corroborated?

12 A Pee Wee Freeman.

13 Q And Mr. Freeman was never polygraphed, correct?

14 A No, but he corroborated what Mr. Carpenter said
15 at different times. And, you know, all of this is done
16 this way, Mr. Lofton. When we polygraph these people and
17 when we talk to these people, just like Jessie Smith,
18 Kenny Ray Taylor, we don't put all the credibility into
19 their statements as one would think, until they all at
20 different times, on different occasions, and in a lot of
21 cases don't even know that one corroborates almost
22 verbatim what the other says. That makes us believe,
23 regardless of how reliable their testimony may be or
24 credible it may be, that they're telling the truth, or
25 they've all made up lies at different times and can tell

147

1 us about them exactly. So that's how we do that and
2 that's why a lot of these questions or a lot of these
3 people aren't put on a polygraph.

4 And if I may give an example, without being
5 redundant or trying to insult intelligence, if Pee Wee was
6 to tell me, I off-loaded about 500 pounds of dope with
7 Fireball. And then later, never have told Fireball about
8 it and he tells me the same thing, without a polygraph I
9 would accept that as being pretty much the truth, sir.

10 Q I understand that, Mr. Gordon. The point I'm
11 trying to make and the problem I'm having with all of
12 these alleged items, this '84 van, Pee Wee Freeman told
13 you about it and he wasn't polygraphed, correct?

14 A That's correct.

15 Q That's the witness you've identified as telling
16 you about the '84 van, correct?

17 A About the dope being in the van, yeah.

18 Q And then you tell the Court that Mr. Carpenter
19 was polygraphed but he didn't pass the polygraph, but yet
20 he wasn't polygraphed about the '84 van.

21 A And I don't know that.

22 Q All right, sir. So the bottom line is, other
23 than Pee Wee Freeman, you have no information -- other
24 than Pee Wee Freeman, that you absolutely know of, that
25 said this '84 van was used in some illegal drug

148

1 transaction that Charles Carpenter was involved in, isn't
2 that correct?

3 A Nobody but Pee Wee and Charles Carpenter, that is
4 correct.

5 Q All right. And you don't know whether Mr.
6 Carpenter was deceptive on that particular issue or not,
7 is the point I'm trying to make.

8 Mr. Kittrell: Your Honor, he doesn't know what
9 questions were asked in regard to specifics in the
10 polygraph. The polygraph is certainly irrelevant. There
11 are 97 witnesses involved who were gonna testify at
12 trial. Not everybody can be polygraphed. The polygraph
13 is only an investigatory tool.

14 Court: You gentlemen need to understand that
15 I've been around the courtroom a number of years myself
16 and a jury is not here. And I'm going to permit some wide
17 latitude for both of you to have your position fully on
18 this record. Go ahead. I understand what you're saying,
19 but given the fact that this is a non-jury proceeding, I'm
20 not gone be as technical as I ordinarily would. Proceed,
21 Mr. Lofton.

22 Q Moving from the van to the Blazer, Mr. Gordon,
23 the information furnished to you concerning this blazer
24 being involved in some illegal drug trafficking was
25 furnished by whom?

149

1 A Kenny Ray Taylor, being one. Carpenter, himself,
2 being one. Heidi Price, who is not a Defendant on there,
3 being one.

4 Q Well, if Mr. Carpenter advised you that this van
5 was involved in illegal drug trafficking then it was
6 subject to seizure, so he's fully cooperated on that,
7 correct?

8 A He won't tell me where it is and he does not
9 admit owning the van, sir -- the blazer. He just borrowed
10 somebody else's van and we can't seize somebody else's
11 stuff if he doesn't own it, if we can't prove that they
12 knew of it or, in fact, he actually owns it, and we know
13 that he owns it.

14 Q You know that the Blazer was used, according to
15 Mr. Carpenter, in an illegal drug transaction, and is
16 subject to seizure, correct?

17 A It's subject to seizure and we know he owns it
18 and he won't admit that.

19 Q You have not seized the Blazer, correct?

20 A No, sir, we have the title though.

21 Q The four-wheeler vehicle that you've mentioned,
22 who indicated to you that that was involved in illegal
23 drug trafficking procedures?

24 A Kenny Ray Taylor, Heidi Price, and I think -- and
25 I may stand corrected on this, sir, -- in the debriefing

150

1 Carpenter admits pulling the four-wheeler with the Blazer
2 to Kenny Ray Taylor's house and taking dope off of the
3 four-wheeler.

4 Q And neither one of those people that have
5 mentioned this four-wheeler being involved in illegal drug
6 trafficking have been polygraphed, correct? Taylor or
7 Heidi Price?

8 A You've got the list there. If you say he hasn't
9 I don't disagree.

10 Mr. Kittrell: Your Honor, that's a part of the
11 record and, no, they were not polygraphed.

12 Q Thank you. The John Deere tractor that you say
13 is at his father's house, that has not been seized either,
14 has it not?

15 A No, sir. That was one of the questions that was
16 asked by Special Agent Logan and we were sent out of the
17 room before he would answer it and came back in and never
18 would answer the question because he said that we weren't
19 gone take his father's tractor.

20 Q So you don't know whether or not that tractor was
21 purchased with or had anything to do with an illegal drug
22 transaction, correct?

23 A I don't know where the money come from. I just
24 know who paid for it.

25 Q All right, sir. You also indicated that Mr.

151

1 Carpenter told you about two acres of land that he owned
2 up in North Carolina, correct?

3 A That's correct, sir.

4 Q And you indicated that you've identified this
5 land, correct?

6 A If I said I have ---

7 Q Well, I mean, the State Grand Jury has identified
8 the property, correct?

9 A I'm saying the property is in McDowell County.
10 We have found that information out. As far as getting the
11 plat, or whose name it's actually in, that, I don't know
12 whether all that's been done, but we found out that he had
13 bought property in McDowell County, but I'm not avoiding
14 your question. I don't want you to think, yeah, I can
15 show you where he owns something, but he has told me about
16 it, we own this property up there, approximately 2-1/2
17 acres in McDowell County -- and whose name it's in, I
18 don't know.

19 Q And you have no information do you, Mr. Gordon,
20 to indicate other than Mr. Carpenter told you he owned
21 land up in North Carolina, that that particular land was
22 even purchased with drug proceeds or had anything to do
23 with an illegal drug transaction, do you?

24 A I don't know where the money come from.

25 Q All right. The furniture we've already

discussed. The boat that you made reference to was purchased when?

A I can refer back to a statement that I took, and I don't know whether it's in a transcript or not, where he and Buddy Plyler bought those boats about the same time.

Q Okay. And you are basing that testimony concerning that boat on Buddy Plyler telling you that it was purchased with drug money or somehow was involved in an illegal narcotics transaction?

A I'm telling you that it came from -- I'm not saying Buddy Plyler, because it didn't. It came from someone else that's aware of it.

Q Would you tell us who it came from?

A Pee Wee Freeman.

Q And Mr. Freeman is the co-defendant we've mentioned a number of times that has not been polygraphed, correct?

A That's correct, sir.

Q So, here again, you're relying on Mr. Freeman for the information you've been furnished in connection with the boat?

A All of this information came from other people, that's correct, sir.

Q Mr. Gordon, when you and Mr. Logan and myself sat down with Mr. Carpenter, back in April, he actually

153

1 furnished you a good deal of information, did he not?

2 Mr. Kittrell: I'd ask for a clarification as to
3 that date.

4 Q The first time that you -- I believe it was April
5 6 -- whatever the day before we entered the plea, the
6 night before, over in the Darlington County Jail, correct?

7 A That's correct. Up at the Darlington Jail there
8 was -- I don't know whether he furnished us a lot or
9 corroborated some that we had, sir, but I don't know
10 whether he added any additional information or not. To my
11 thinking, he did not.

12 Q During that debriefing, you and Mr. Logan spoke
13 with him for several hours, did you not?

14 A We were in there a good while. I don't deny
15 several hours. It took a while.

16 Q And during that debriefing he gave you
17 information concerning who his main source of supply of
18 marijuana had been over a number of years, did he not?

19 Mr. Kittrell: Your Honor, that would be a fairly
20 speculative question. If he doesn't know everything that
21 Mr. Carpenter knows, then he doesn't know whether he's
22 giving him his main source of supply.

23 Q I'll rephrase the question. During that
24 debriefing, which lasted for several hours, Mr. Carpenter
25 told you and Mr. Logan about an individual by the name of

154

1 Darlene Boyd, did he not?

2 A Yes, sir, he told us about Darlene Boyd.

3 Q And he indicated to you and Mr. Logan at that
4 time that Darlene Boyd had been the main source or was his
5 primary source of the marijuana for a number of years, did
6 he not?

7 A That's correct, sir, but I want it to be plainly
8 understood that we give him the name, Darlene Boyd. He
9 did not give it to us.

10 Q You gave him the name, Darlene Boyd, and you
11 asked him who Darlene Boyd was, correct?

12 A That's correct.

13 Q And as a result of you asking him who Darlene
14 Boyd was, he told you that she had been his main source of
15 supply or one of his main sources of supply for a number
16 of years, correct?

17 A That's correct, sir.

18 Q All right, sir. What, if anything, have you and
19 the State Grand Jury done with reference to that
20 information to determine if Mr. Carpenter was truthful in
21 telling you his main source of supply for a number of
22 years was Darlene Boyd?

23 Mr. Kittrell: Your Honor, I think that he's
24 asking whether or not we 're proceeding on a specific
25 investigation as to Darlene Boyd.

155

1 Court: No, sir, "I don't think we'd better get
2 into that.

3 Q I'll rephrase the question, Your Honor. As a
4 result of Mr. Carpenter telling you that Ms. Boyd was his
5 main source of supply for a number of years of marijuana,
6 have you been able to corroborate the fact that she was,
7 in fact, a major supplier of marijuana?

8 A We had that. He corroborated what we already
9 had, sir.

10 Q So he furnished you information truthfully about
11 Darlene Boyd, correct?

12 A That he knew we already had, sir.

13 Q Of course, you could not, at that time, Mr.
14 Gordon -- you nor Mr. Logan -- you did not, other than ask
15 him who Darlene Boyd was, you did not tell him what
16 information ya'll had about Darlene Boyd, did you?

17 A I didn't. I don't think Mr. Logan did.

18 Q So the statement that he only furnished you
19 information that he knew that you already had, he really
20 didn't know what you already had, other than you had the
21 name, Darlene Boyd, correct?

22 A If he'd been reading those transcripts he would
23 have.

24 Q He would have had information that you had the
25 name, Darlene Boyd?

156

1 A I don't know what point in time he got the
2 transcripts, but it was in those transcripts and if he
3 read them he would have known.

4 Q My point is that as far as that individual, her
5 being a main source of supply for marijuana to him, he
6 told you everything he knew about her, as best you know,
7 correct?

8 A He told us about her, and I guess he told all. I
9 don't know. Well, I take that back -- he's told me -- we
10 got other testimony where Darlene Boyd was involved in
11 drug deals with him that he did not tell us about. Matter
12 of fact, those drug deals took place at the compound or
13 his house, that we've got testimony to that.

14 Q And that testimony came from whom?

15 A Kenny Ray Taylor.

16 Q And that's another one of those individual
17 co-defendants who has not been polygraphed, so you don't
18 know whether his information is accurate or not, do you?

19 Mr. Kittrell: Your Honor, asking him whether or
20 not the polygraph means that he's telling the truth, he
21 wasn't polygraphed -- we've already conceded that. He's a
22 cooperating witness and he was ---

23 Court: Well, he can rephrase the question and
24 get the same answer, but go ahead. If you can't, say you
25 can't.

157

1 A I don't know. Ya'll read them out a while ago
2 and I don't think Kenny Ray's name was on there. If you
3 say it wasn't, I don't argue with that, but that's not
4 what tells whether or not we're gone use that information
5 or not. If it's corroborated information, we use it.
6 That is just icing on the cake. It's sort of like the
7 breathalyzer with the drunk. The breathalyzer is just
8 additional stuff. If he's staggering, falling down,
9 driving over the road, we charge him and that breathalyzer
10 tell us how much. The same way with the polygraph.
11 That's just additional. We corroborate it. When he told
12 us about those things and we got that information, we used
13 that, but the polygraph on those people, I don't deny any
14 of them, that they weren't run, that you say that you've
15 got.

16 Q And all of these people that we're talking about,
17 Mr. Gordon, these people that were corroborating
18 Defendants and the people that were not polygraphed, of
19 course, all of these people were trying to better their
20 situation. Is that a fair statement?

21 A They were cooperating to help themselves. I
22 don't deny that.

23 Q All right, sir. So they would have a motive to
24 lie or a motive to fabricate or whatever, would they not?

25 A We take that into consideration, too, sir. In

158

1 this particular instance he told us basically the same
2 thing that Carpenter has told us. The only thing is he
3 told us some other instances to go along with it. What
4 motive is there to lie? I mean, what I'm saying is, he's
5 telling you about them, just to add one or two little ones
6 in with it really don't make any difference and that's
7 explained to him.

8 Q But my point is, if it wouldn't mean anything,
9 then why you would mention it. But you didn't -- and by
10 you I mean the State Grand Jury -- you didn't bother to
11 polygraph Mr. Taylor to see whether or not those little
12 things that he added on, that you say really don't make
13 any difference, whether he was telling you the truth about
14 those, do you?

15 Court: I think now that you're probably getting
16 into an area that the polygraph operator will have to
17 answer. He's not an expert.

18 Q No, I'm asking if he bothered to polygraph him on
19 it.

20 Mr. Kittrell: Your Honor, the polygraph
21 decisions are made by the attorneys in the office. He
22 can't polygraph everybody.

23 Court: I think that would probably be from
24 somebody else, Mr. Lofton.

25 Q In addition to furnishing you information about

159

1 the marijuana supplier, he also furnished you information
2 about Jessie James -- James Earl Smith -- being another
3 source of supply for drugs, correct?

4 A That's correct.

5 Q And that information was corroborated by Mr.
6 Smith, correct?

7 A Negative. He corroborated Mr. Smith's
8 information.

9 Q But is it fair to say they corroborated each
10 other?

11 A I guess. Mr. Smith give it to us well before and
12 he had an opportunity to see a transcript. I'm not trying
13 to dodge your question, I'm just simply saying, hey, if
14 somebody's already telling on him, I'm gone agree to
15 cooperate, own up to it if I did it, I don't think that
16 Carpenter would have told us squat if we didn't have it
17 already in hand. And I'm not being a smart-aleck, but I'm
18 saying that Smith gave it to us first, transcripts were
19 available. He knew, basically, everything that we knew
20 and he told us only what we knew. That's all the
21 information that Carpenter has ever really given us, is
22 information that he knew that we already had information
23 of. I can think of none that he has told us about,
24 whatsoever, that we did not already have, and we would
25 just more or less corroborate what we already knew, sir.

160

1 Q The bottom line is, Mr. Gordon, is two main
2 sources of supply, Darlene Boyd and James Earl Smith,
3 whether you had information or didn't have information,
4 Mr. Carpenter told you about those two sources of supply,
5 did he not?

6 A Our main information of his source of supply is
7 one of the ones he will not reveal, sir.

8 Q That is your opinion, correct?

9 A That's our opinion, that one of his main
10 interests, Lawyer Boy, he will not reveal. Whether it be
11 money to buy it with or whether it be drugs. Those, he
12 won't reveal. The ones that we've already popped and
13 arrested that were affiliated with him and that were big
14 in the game with him, yes, he told us about. Jessie Smith
15 and Darlene Boyd.

16 Q And the bottom line in all of this, Mr. Gordon,
17 is that the reason you can sit on the stand and testify
18 that he hasn't told us about these people and we know he
19 has this information, that is because in your opinion and
20 the opinion of the polygraph examiners he failed the
21 polygraph in connection with these areas, correct?

22 A I don't know whether I fully understand what
23 you're asking me. The reason I can sit on the stand and
24 say what now?

25 Q Well, the main thrust of your testimony is that

161

1 he as refused to identify and tell you certain information
2 about certain other individuals, correct?

3 A That's correct.

4 Q And that is based on the fact that he has failed
5 to pass the polygraph in connection with that?

6 A No. That's not correct.

7 Q That doesn't have anything to do with it?

8 A You just identified those people that's given
9 that information that has not taken a polygraph.

10 Q I'm talking about Mr. Carpenter taking the
11 polygraph. That's the basis that you are saying he hasn't
12 fully cooperated with you?

13 A That's one.

14 Mr. Kittrell: Your Honor, I think that the
15 question is inartfully phrased. Mr. Gordon is testifying
16 that the Defendant failed to cooperate by not giving out
17 information. It's not that the information he gave was
18 incorrect or that he lied about it on the polygraph. All
19 he's been testifying about is with regards to specific
20 acts ---

21 Court: I heard all this. I hear it just as well
22 as you. I understand what he's saying and I understand
23 the thrust of the cross-examination. I've got it right up
24 here. I'm listening carefully. Go ahead.

25 Q Your Honor, that's all the questions I have of

162

1 this witness. What I'd like to do at this time is
2 introduce a copy of the interview and polygraph
3 examination of Mr. Carpenter, which was furnished to us by
4 the State.

5 Court: All right.

6 Mr. Kittrell: Your Honor, I'd like, at the same
7 time and for the same reason to introduce the other
8 statements taken by the officers involved in the
9 investigation of this case, of the Defendants and
10 cooperating witnesses who were threatened by Carpenter.

11 Court: Well, let's take them up one at the time,
12 please, and then I'll deal with it and I want to make sure
13 that added to those -- just as well deal with that now.
14 As I understand it, you have affidavits from other
15 witnesses who allegedly say they were threatened?

16 Mr. Kittrell: Yes, sir, that's correct.

17 Court: Did you provide counsel with the names of
18 those witnesses?

19 Mr. Kittrell: Not only did we provide names to
20 counsel, we provided a copy of the statements themselves.

21 Court: Have those witnesses been subpoenaed?

22 Mr. Kittrell: They are here today, ready to
23 testify.

24 Court: All right, sir. I suspect that he's
25 entitled to -- if the witnesses are here, isn't the better

163

1 way to have the witnesses testify?

2 Mr. Kittrell: They will testify, Your Honor, but
3 I want to make those statements a part of the record.

4 Mr. Lofton: Your Honor, they are not
5 affidavits. They are statements. They are interview
6 statements, taken by some agent. They are not the
7 witness' testimony.

8 Court: Well, I'd rather take the live testimony
9 if they're here.

10 Mr. Kittrell: By the same token the statement he
11 gave you was what Carpenter gave to our office. By the
12 same token, if he's introducing that we can introduce our
13 statement. If not, then his ---

14 Court: No, sir. No, sir. I'm going to permit
15 this, but I'm not going to permit yours at this time. I
16 may later after I hear the live testimony. You understand?

17 Mr. Kittrell: All right, sir.

18 Court: I'm not precluding that, but this is
19 totally two different issues and I'm gone let him proceed
20 and I'll rule on yours at the time. We keep talking about
21 these statements. I want to make sure that the authors of
22 those statements are here to testify.

23 Mr. Kittrell: They are, Your Honor.

24 Court: All right, that's fine.

25 (INTERVIEW & POLYGRAPH EXAM ENTERED IN EVIDENCE

144

1 AS DEFENDANT'S EXHIBIT #2.)

2 Q That's all the cross-examination I have of this
3 witness.

4 Court: All right, sir. Have you got any
5 re-direct, Mr. Kittrell?

6 RE-DIRECT EXAMINATION BY MR. KITTRELL:

7 Q Did any other cooperative co-defendant threaten
8 the lives of other Defendants or any other witnesses?

9 A I have no knowledge of any one doing that other
10 than Carpenter.

11 Q Would you define Carpenter as being a cooperating
12 witness?

13 A Define him as being a cooperative witness?

14 Q Was he cooperative with you?

15 A He's not a cooperating witness. No, he was not.

16 Q Was he withholding information that you were
17 aware that he knew of?

18 A Yes, sir, in my opinion he definitely is.

19 Q When Kenny Ray Taylor was threatened by Carpenter
20 and you heard the word, dead, did Kenny Ray Taylor tell
21 you anything after that?

22 A He told me that he just told ---

23 Mr. Lofton: Now that's hearsay, Your Honor.

24 Court: Wait a minute. Is Kenny Ray Taylor here
25 and gone testify?

165

1 Q He is here to testify.

2 Court: Well, the witness is here to testify. I
3 would not otherwise allow it.

4 Q Your Honor, under the Res Gestae rule in the case
5 of State vs Long ---

6 Court: There's no need to get into that. If the
7 witness is here to testify and is subject to
8 cross-examination I'm gone let it in. The Courts have
9 said we could do that.

10 Q Did Kenny Ray Taylor tell you what Carpenter told
11 him?

12 A That's correct. Kenny Ray Taylor set in that end
13 chair and told me that Carpenter told him he was a dead
14 man and Kenny Ray Taylor went even further and told me he
15 was gone beat his butt, I think is the word he used. He
16 may have used harsher words than that. That's when I was
17 gone remove him from the room.

18 Q Thank you.

19 RECROSS EXAMINATION BY MR. LOFTON:

20 Q One question, Your Honor. Mr. Gordon, we've
21 established that there were sixteen plea agreements and
22 there were seven polygraphs given. That's in the record
23 and stipulated to, correct?

24 A That is correct, sir.

25 Q The nine individuals that cooperated and were not

166

1 polygraphed, you and the State do not know whether or not
2 they withheld any information from you, do you?

3 A No, sir.

4 Mr. Kittrell: That's all speculating, Your Honor.

5 Court: He asked him of his own knowledge, and
6 that's all right. All right, I'm gone let him come down
7 before somebody else asks some mOre questions, is that all
8 right?

9 (WHEREUPON THE COURT RECESSED FOR LUNCH.)

10 Court: All right, sir, you ready to proceed?

11 Mr. Kittrell: Yes, sir, the State calls Ricky
12 Lynn Johnson.

13 RICKY LYNN JOHNSON, BEING FIRST
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. KITTRELL:

16 Q State your full name for the record.

17 A Ricky Lynn Johnson.

18 Q Mr. Johnson, where are you from?

19 A Pageland, South Carolina.

20 Q And were you born there?

21 A Yes, sir.

22 Q How long have you lived there?

23 A I've been living there all my life.

24 Q Did you recently plead guilty to grand jury
25 charges?

167

1 A Yes, sir.

2 Q Do you know the Defendant, Charles Carpenter?

3 A Yes, sir.

4 Q How long have you known him?

5 A I couldn't say.

6 Q Years, months?

7 A A couple of years.

8 Q And how do you know him?

9 A Just by seeing him.

10 Q After you were arrested on the State Grand Jury

11 charges for which you pled guilty, did you have occasion

12 to be at the jail where Mr. Carpenter was also being held?

13 A Yes, sir.

14 Q Do you know about when that was?

15 A That was in June, July, May, something like that.

16 Q Of this year?

17 A Yes, sir.

18 Q And did you talk to Charles Carpenter at that

19 time?

20 A Yes, sir, on the yard.

21 Q Did he talk to you?

22 A Yes, sir.

23 Q What did he tell you?

24 A Well, we was on the yard one day and he told me I

25 had about a five or ten percent chance of living.

168

1 Q He told you you had a five or ten percent chance
2 of living?

3 A Yes, sir.

4 Q And why did he tell you that?

5 A I don't know.

6 Q What else did he tell you?

7 A That's about it.

8 Q Did he mention anything about the police?

9 A No, sir.

10 Q Do you know that to be a fact or you're not sure
11 of your recollection?

12 A I'm not sure.

13 Q Did you take that to be a threat?

14 A Yes, sir.

15 Q And who else did he threaten besides yourself?

16 A Kent Hoover, Jessie James, and Kenny Ray Taylor.

17 Q Were you concerned for your safety?

18 A Yes, sir.

19 Q And these were threats because you had cooperated
20 with the State Grand Jury as a witness?

21 A Yes, sir.

22 Q Thank you. I don't have anything else.

23 CROSS EXAMINATION BY MR. LOFTON:

24 Q Mr. Johnson, when did you first start cooperating
25 with the State Grand Jury?

169

1 A What do you mean, sir?

2 Q Well, at some point in time, based on what Mr.
3 Kittrell, the questions he just asked you, did you start
4 cooperating with the police in connection with an
5 investigation, helping them with the investigation?

6 A No, sir. No, sir.

7 Q Did you ever furnish them information?

8 A No, sir.

9 Q About any investigation of Mr. Carpenter?

10 A No, sir.

11 Q At no time did you tell the police or the grand
12 jury anything about Mr. Carpenter?

13 A No, sir.

14 Q You didn't have any knowledge about Mr. Carpenter
15 being involved in any illegal activity, correct?

16 A No, sir.

17 Q So there wasn't anything for you to tell them
18 about, correct?

19 A No, sir.

20 Q So there wasn't any reason for Mr. Carpenter to
21 threaten you in any way because you didn't know anything
22 about him, did you?

23 A Well, why did he say it if he didn't mean it then?

24 Q I'm asking you. You didn't know anything about
25 Mr. Carpenter, did you?

170

1 A No, sir.

2 Q Okay, so there wasn't any way that you could hurt

3 him by testifying against him, was there?

4 A No, sir.

5 Q Isn't it a fact that this happened on an occasion

6 when Mr. Carpenter was jogging around the yard? That was

7 the only time that you ever even come in contact with him

8 and he said it in a joking manner?

9 A I didn't take it as a joke.

10 Q You didn't take it as a joke but you don't know

11 whether or not he was directing a threat at you, that you

12 had a five or ten percent chance of living now, do you?

13 A The way it sounded to me, it was.

14 Q The way it sounded to you.

15 A Yes, sir.

16 Q But there wasn't a thing you could do to Mr.

17 Carpenter to hurt him in any way, was there?

18 A No, sir. But why did he say it then, if he

19 didn't mean it?

20 Q My question was, you didn't have any information

21 that could have been used against him, correct?

22 A Right.

23 Q So there wasn't any reason for him to threaten

24 you, was there?

25 A Well, he did it.

171

1 Q There wasn't any reason for him to threaten you
2 is what I'm asking you.

3 A No, there wasn't no reason but why did he say it?

4 Q All right, sir. Mr. Johnson, you indicated that
5 you pled guilty to certain charges after having been
6 indicted by the State Grand Jury. What charge did you
7 plead guilty to?

8 A I don't even remember right now.

9 Q What kind of sentence did you get?

10 A I got a one to fifteen.

11 Q Have you finished serving your sentence?

12 A Yes, sir.

13 Q And since you've been out, have you been arrested?

14 A Yes, sir.

15 Q And when were you last arrested?

16 A I don't rightly remember.

17 Q And you were arrested for drugs?

18 A Yes, sir.

19 Q And this was in the last month or so?

20 Mr. Kittrell: Your Honor, I don't believe this
21 is relevant.

22 Court: Well, it may have some bearing on his
23 credibility. I assume that's what Mr. Lofton is doing.

24 Mr. Kittrell: I don't think an arrest
25 constitutes impeachable testimony.

1 Court: No, sir, but I'm going to permit it in
2 the overall parameters of what we're concerned with.

3 Q How many times have you been arrested since
4 you've been out?

5 A Just once.

6 Q And the charge was what?

7 A Possession, simple possession.

8 Q Of marijuana or cocaine?

9 A Marijuana.

10 Q And have you been to court on those charges?

11 A No, sir.

12 Q All right, sir. Mr. Gordon and Mr. Knight,
13 they've indicated they're gonna try to help you on those
14 charges, haven't they?

15 A No, sir.

16 Q Did you receive, in connection with the sentence
17 that you got before this court in the grand jury case, did
18 you receive any probation?

19 A Yes, sir, three years.

20 Q And has anybody taken any steps to revoke your
21 probation?

22 A No, sir, I've talked to my probation officer.

23 Q But nobody has made any effort to revoke your
24 probation as a result of this more recent charge of simple
25 possession?

173

1 A No, sir, I sit down and explained it to her and
2 everything like that.

3 Q Thank you, Your Honor.

4 REDIRECT EXAMINATION BY MR. KITTRELL:

5 Q After you entered your plea of guilty, before
6 that fact you spent some time talking to Dottie Galloway,
7 didn't you?

8 A Yes, sir.

9 Q Do you consider that to be cooperating?

10 A No, sir.

11 Q But you gave her information, would that be a
12 fair statement?

13 A What did you say now?

14 Q You talked to Dottie Galloway?

15 A Just talking to her.

16 Q And she's a police agent?

17 A Yes, sir.

18 Q Did you talk to her about this case?

19 A No, sir.

20 Q Did you talk to her about any of the people that
21 were arrested with you?

22 A No, sir.

23 Q Did you talk to her about any people contained on
24 the indictment?

25 A No, sir.

174

1 Q You were in jail with Carpenter and he was in
2 jail with you because of this case, wasn't he?

3 A Yes, sir.

4 Q And he threatened you because you were afraid of
5 ---

6 Mr. Lofton: Objection, Your Honor. He's just
7 leading -- he's testifying.

8 Court: Yes, sir, that's leading.

9 Q Were you threatened by Mr. Carpenter?

10 A Yes, sir.

11 Q Thank you.

12 Court: Come down.

13 Mr. Kittrell: Dothea Galloway.

14 DOTHEA GALLOWAY, BEING FIRST DULY

15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. KITTRELL:

17 Q Please state your name for the record.

18 A My name is Dothea Galloway.

19 Q Is your nickname Dottie?

20 A Yes, sir.

21 Q Where do you work?

22 A I work for the Governor's Raid Team.

23 Q How long have you worked in that capacity?

24 A I have been there ever since they started in June
25 of 1988.

175

1 Q And what do you do for the Governor's Raid Team?
2 A I am an undercover agent.
3 Q What, specifically, do you do as an undercover
4 agent?
5 A I usually buy drugs.
6 Q Now, are you familiar with what's been referred
7 to as the Carpenter investigation?
8 A Yes, sir.
9 Q Why is that?
10 A When I was working on a case in Lancaster we
11 ended over in Chesterfield and got into a ring that was
12 connected with the Carpenter case. And when they found
13 out who I was buying from we put it all together.
14 Q So from the very beginning you have been involved
15 in the investigation?
16 A Basically, yes, sir.
17 Q Now, after the arrest came about in November of
18 1989, did you have occasion to talk to the various
19 co-defendants in this case?
20 A Yes, sir, I did.
21 Q Where would you speak to them?
22 A Usually in the jail.
23 Q And were you there whenever Charles Carpenter
24 would be there?
25 A Yes, sir, on several occasions.

176

1 Q Did you ever have a conversation with Carpenter?

2 A Yes, sir, at one point. I had gone to the jail
3 to research some papers on some of the co-defendants and
4 Carpenter was in the back yard with some of the other
5 co-defendants and called me over to the fence. And I went
6 over and jokingly -- well, I took it jokingly, he told me
7 -- he asked me if I could get him a contact visit and I
8 laughed and I asked him with who and he said, well, I
9 would do. And I kind of laughed about that and then he
10 told me, he said, Dottie, you really need to do something
11 to help me. And I asked him, I said, what do you mean?
12 He said I'm gonna get 50 years. And I said, for what? He
13 said, I'm just gonna get 50 years. I said, well, if you
14 go along with the plea agreement that you agreed to you'll
15 only end up doing the 25 that you have and he said, no,
16 I'm gonna do 50 years because I'm not gonna tell you any
17 more than what ya'll already know.

18 Q Nothing further, Your Honor.

19 CROSS EXAMINATION BY MR. LOFTON:

20 Q Ms. Galloway, when did this conversation
21 supposedly take place?

22 A It took place on or about April 12th.

23 Q And I received, after I left my office yesterday,
24 a statement prepared by you and let me hand this up and
25 ask you if that's a copy of the statement that you

1 prepared?

2 A Yes, sir, it is.

3 Q And the statement that you prepared reporting
4 this event occurred back in --when was it?

5 A April.

6 Court: Have you got another copy of these
7 various statements?

8 Q I'll be glad to submit this up to the Court.
9 This statement that you have told the Court occurred
10 between you and Mr. Carpenter back in April and you
11 finally reduced that to writing on August 8th?

12 A Yes, sir.

13 Q That was yesterday?

14 A Yes, sir.

15 Q And faxed it to my office?

16 A Yes, sir.

17 Q And it hadn't been reduced to writing at any
18 other time?

19 A I wrote it down the day that he said it and it's
20 in my notes.

21 Q But it never has been furnished to us prior to
22 yesterday?

23 A No, sir.

24 Q And this was, as you indicated, a conversation
25 that took place between you and Mr. Carpenter in the back

1 yard of the jail?

2 A Yes, sir.

3 Q And he was joking around with you about contact
4 visits?

5 A Yes, sir.

6 Q And it was a pretty light-hearted conversation,
7 would be a pretty good way to describe it, would it not?

8 A The contact visit part of it was. Or I took it
9 that way.

10 Q And, basically, what he told you was that I'm
11 going to get the 50 years because I've told you everything
12 and you people don't believe me. Isn't that what he said?

13 A No. He told me he would only tell us what we
14 knew.

15 Q I have nothing further.

16 REDIRECT EXAMINATION BY MR. KITTRELL:

17 Q Mr. Lofton had mentioned something about there
18 being a jovial or joking exchange between you and the
19 Defendant and you said it was relative to the contact
20 portion. Did you, at any time, ever do anything for Ricky
21 Lynn Johnson at his request?

22 A As far as -- we went over and we checked on his
23 mother and his nephew for him.

24 Q Why was that?

25 A Because he said that he had received threats from

179

1 Charles Carpenter on his nephew and his mother and so
2 myself and Bonnie Huntley, who is an investigator at the
3 Chesterfield Sheriff's Department, had gone over
4 periodically and checked on them.

5 Q And you did up this statement at my request and
6 then forwarded it to Mr. Lofton?

7 A Yes, sir, I did.

8 RECROSS EXAMINATION BY MR. LOFTON:

9 Q One more thing, Ms. Galloway. And when you
10 checked on Mr. Johnson's mother and nephew, they were
11 fine, weren't they?

12 A At that time, yes, sir.

13 Q They're still fine, aren't they?

14 A As far as I know. I haven't seen them since the
15 case.

16 Q Thank you.

17 Court; You may come down. Thank you.

18 Mr. Kittrell: Robert Kent Hoover.

19 ROBERT KENT HOOVER, BEING FIRST

20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. KITTRELL:

22 Q Your name is Robert Kent Hoover?

23 A Yes, sir.

24 Q And you go by the name of Kent, right?

25 A Yes, sir.

180

1 Q Where were you born?
2 A Richmond County.
3 Q And where is that?
4 A Rockingham, North Carolina.
5 Q Is that where you live now?
6 A Yes, sir.
7 Q Are you presently incarcerated?
8 A Yes, sir.
9 Q What are you in jail for?
10 A Trafficking.
11 Q Trafficking in what?
12 A Cocaine.
13 Q And was that arrest and conviction as a result of
14 this State Grand Jury investigation?
15 A Yes, sir.
16 Q And you were involved in drug trafficking with
17 the Defendant Charles Carpenter?
18 A Yes, sir.
19 Q Were you ever in jail at the same time that
20 Charles Carpenter was in jail?
21 A Yes, sir.
22 Q And at that time did you have a conversation with
23 Mr. Carpenter?
24 A No, sir. I heard him talking with somebody else.
25 Q What did you hear him say?

181

1 Mr. Lofton: Can we tie this down as to when,
2 Your Honor?

3 Q What date was this?

4 A I couldn't really tell you the exact date.

5 Court: Approximately and then tell him where?

6 A I was in Chesterfield jail, I know that.

7 Q The Statement may refresh his recollection.

8 Court: I'm sure Mr. Lofton should have a copy of
9 the statement, does he not?

10 Q Yes, sir.

11 A May 1st.

12 Court: Can I see it a second?

13 Q Yes, sir. Was it on May 1, 1990 that you had a
14 conversation with Mr. Carpenter and what did he tell you?

15 A He just told me I probably had a five percent
16 chance of living out of this here.

17 Q And why is that that he told you that?

18 A I don't know. He could have just been picking or
19 whatever. I don't know. He said it though.

20 Q Did you take that to be a threat?

21 A He talks a lot. You can't really, you know, take
22 him, you know. He could have been joking or whatever, you
23 know. I don't really know.

24 Q And did he use you to relay a threat to any other
25 co-defendant?

182

1 A No, sir.

2 Q Have you ever heard him threaten a co-defendant?

3 A No, sir.

4 Q Do you believe he has the capacity to cause you

5 harm if he wanted to do it?

6 A To my knowledge, no, sir.

7 Q Do you think he has the capacity to have others

8 cause you or your family harm?

9 A I couldn't say yes or no. I ain't never ---

10 Q Didn't we have a conversation in the hallway a

11 short time ago?

12 A Yes, sir.

13 Q Didn't you express a concern for your family?

14 A Yeah, I got some for my family, yeah.

15 Q And why do you have that concern?

16 A Well, you know, if he wanted -- I mean, I don't

17 know that he would, but if he wanted to, if he's got the

18 money, like he should, he could have it done.

19 Q He could have what done?

20 A You know, somebody hurt, or whatever.

21 Q He could hurt you?

22 A Right.

23 Q And did you take what he told you in the yard on

24 May 1st to be a threat against you?

25 A Well, like I said, you know, Fireball, you can't

183

1 never really take him serious. He jokes a lot, or
2 whatever, you know.

3 Q Did you tell me in the hallway that you took him
4 serious?

5 A Well, in a way, you know.

6 Q I have nothing further, Your Honor.

7 CROSS EXAMINATION BY MR. LOFTON:

8 Q Mr. Hoover, since you've been in custody, you and
9 Mr. Carpenter at one time were even in a cell together,
10 weren't you? In Chesterfield? Weren't ya'll in a cell
11 together?

12 A Well, I'd come over and visit in the cell he was
13 in.

14 Q Yes, you visited in the cell he was in over in
15 Chesterfield jail?

16 A Uh huh.

17 Q And this was after ya'll had entered your pleas,
18 wasn't it?

19 A Yes, sir.

20 Q And he didn't harm you in any way at that time,
21 did he?

22 A No, sir.

23 Q He didn't threaten you, did he?

24 A No, sir.

25 Q He didn't tell you he was gone hurt you or your

184

1 family, did he?

2 A No, sir.

3 Q All right.

4 EXAMINATION BY THE COURT:

5 Q Mr. Hoover, I want to know now -- you've given a
6 statement and I have it before me.

7 A Yes, sir.

8 Q Charles Carpenter said to you, threatened you by
9 saying -- and I want to know did he say it or not?

10 A Yes, sir, he did say it.

11 Q You say, your wife and little girl were living a
12 dangerous life and you're testifying before the grand jury?

13 A Yes, sir.

14 Q And it must have concerned you to the extent that
15 you reported it to somebody, didn't you?

16 A Well, SLED come to the -- yes, sir, I reported it.

17 Q And they didn't volunteer it. You reported it,
18 didn't you?

19 A No, sir. No, sir.

20 Q All right, sir. Now, you may cross-examine it on
21 the answers he just gave.

22 CROSS EXAMINATION BY MR. LOFTON:

23 Q Your wife and little girl, they're okay and
24 haven't received any threats from anybody, have they?

25 A No, sir.

185

1 Q They haven't been harmed in any way, have they?

2 A No, sir.

3 Q Okay. In these conversations that you talked
4 about, they took place on the yard of the Chesterfield
5 jail?

6 A Yes, sir.

7 Q And that's where Mr. Carpenter was jogging and
8 you and Mr. Johnson were standing around and everybody was
9 joking and carrying on?

10 A Yes, sir.

11 Q All right. Nothing further.

12 Court: All right, you may come down.

13 Mr. Kittrell: Kenny Ray Taylor.

14 KENNY RAY TAYLOR, BEING FIRST DULY

15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. KITTRELL:

17 Q Your name is Kenny Ray Taylor?

18 A Yes, sir.

19 Q Do you have a nickname that you go by?

20 A K. T.

21 Q Were you convicted in the State Grand Jury
22 investigation involving this Defendant, Charles Carpenter?

23 A Yes, sir.

24 Q And have you pled guilty to certain charges?

25 A Yes, sir.

186

1 Q Are you serving time presently?

2 A Yes, sir.

3 Q During the period of time after you all entered
4 your pleas of guilty and today, have you had any
5 conversations with Charles Carpenter?

6 A Well, the day that we come down here to Marlboro
7 County to enter guilty pleas. He was setting in the thing
8 (jurybox) and Fireball said, he said, you can lose your
9 life for ratting. He said, you can get it done in prison
10 for a thousand dollars. And that was all that was said.

11 Q On April 8 when you were in the visiting room at
12 Chesterfield County jail, did you have difficulty with Mr.
13 Carpenter?

14 A Well, he said, anybody that rats their mama,
15 their daddy, their sister, and all, he said, I'll have
16 them all killed.

17 Q Was he threatening you?

18 A Well, he just made that statement.

19 Q Who is Heidi Price?

20 A My girlfriend.

21 Q And did he ever talk about her?

22 A Well, he told Sharon, the day that Heidi come in
23 down there, to take the ring off of her left hand and put
24 it on the right hand and try to knock her damn eye out.

25 Q Who is George Turner?

187

1 A He's a guy that was in jail with us.

2 Q And what relationship does he have to Mr.
3 Carpenter?

4 A Him and Fireball was in the same cell together.

5 Q Has he ever passed any threats on to you?

6 A No, but he's told me that ---

7 Mr. Lofton: Objection, Your Honor, that's
8 hearsay.

9 Court: No, sir, I sustain that, unless he's here
10 to testify.

11 Q Well, Your Honor, I think that it may be an
12 exception to the hearsay rule in that what he will testify
13 to will illuminate what his state of mind is, i.e.,
14 whether or not this Defendant has, in fact, threatened him
15 and whether he's afraid of him or not.

16 Mr. Lofton: It doesn't get around the hearsay
17 rule, Your Honor.

18 Court: I'm not going to permit that, simply
19 because counsel is denied the opportunity to cross-examine
20 him. Sustained.

21 Q On June 4, 1990, while you were in this
22 courthouse, did you talk to the Defendant Charles
23 Carpenter?

24 A Yes, sir.

25 Q What did he tell you?

188

1 A That's the day that he threatened me, you know,
2 said that anybody could get killed in prison for a
3 thousand dollars. And he told me, he said, you're a dead
4 man.

5 Q Was that for cooperating with the State Grand
6 Jury?

7 A Yes, sir. I went to the Grand Jury May 17th.
8 CROSS EXAMINATION BY MR. LOFTON:

9 Q Mr. Taylor, how long have you been in the drug
10 business?

11 A Ever since '79.

12 Q And are you also a drug user?

13 A Yes, sir.

14 Q And what sort of drugs do you use?

15 A Cocaine?

16 Q And how much cocaine were you using prior to the
17 time of your arrest?

18 A Half ounce, ounce a day.

19 Q Over what period of time did you use a half ounce
20 or an ounce a day of cocaine?

21 A For approximately a year.

22 Q And that was during what time period?

23 A From December 20, 1988 until '89.

24 Q And you were arrested when?

25 A '89.

189

1 Q What month, do you recall?
2 A December.
3 Q And you started cooperating with the police in
4 connection with this grand jury investigation when?
5 A I went to the Grand Jury May 17th.
6 Q And you had a number of charges pending against
7 you in a number of places, or a number of charges pending
8 against you in a number of places, did you not?
9 A In Chesterfield County I had charges.
10 Q Did you not also have some charges pending
11 against you in Texas?
12 A No, sir.
13 Q What kind of a deal did you work out with the
14 government for your testimony before the grand jury?
15 A I didn't work no deal out with the government.
16 Q What kind of sentence did you receive in
17 connection with your guilty plea?
18 A A fifteen-year sentence.
19 Q What was your position from the standpoint of
20 your role in the illegal trafficking of drugs with Mr.
21 Carpenter?
22 A Me and Carpenter didn't have that much, really,
23 you know. I got cocaine from him a couple of times.
24 Q That was it?
25 A That was it.

190

1 Q Now, you testified that back on April 8th at the
2 Chesterfield County Jail Mr. Carpenter told you in the
3 visiting room there, what?

4 A He said -- he was visiting his mother and
5 Sharon. And he said, anybody that rats, he said, they all
6 ought to go to hell and he said, I can get them sent to
7 hell. He said, their mother, brother, daddy, sister, the
8 whole family.

9 Q All right. And sometime after that, were you
10 interviewed by Mr. Gordon from the Governor's Raid Team?

11 A Yes, sir.

12 Q And did they take a statement from you on the
13 14th of June, 1990?

14 A I don't remember what day it was, but they did
15 take a statement.

16 Q At that time did you tell them about that
17 incident, what Mr. Carpenter told you on April 8th in the
18 Chesterfield County jail?

19 A Yes, sir.

20 Q And did they write that down?

21 A I think so.

22 Q Let me show you this statement they've provided
23 to me, dated the 14th day of June, 1990, and tell me
24 whether or not that is contained in the statement, what
25 you just testified about.

191

1 A Yes, sir.

2 Q The part in there about rats going to hell,

3 that's not in the statement, is it?

4 A No, it's not in the statement.

5 Q And the part in there about having your mother or

6 your sister or your father or any of your family members

7 killed, that's not in the statement either, is it?

8 A No, sir.

9 Q So did you tell them that at that time or you

10 just came up with that little story today to try to get

11 even with Fireball Carpenter?

12 A No, I ain't trying to get even with him.

13 Q Well, did you tell them back on the 14th day of

14 June, 1990, what you've testified to here today?

15 A No, I didn't tell them that.

16 Q Oh, you didn't tell them that. I thought you

17 just got through ---

18 A I just got ---

19 Q I thought you just told the Court that you did

20 tell them that.

21 A Hey, I don't remember exactly what I told them.

22 I know he threatened my life, on account of the statements

23 that you got and give to him. And he sent them to CCI.

24 Q Mr. Taylor, the fact of the matter is, your

25 brain's so burned out on cocaine you really don't know

192

1 whether anybody threatened you or didn't threaten you, do
2 you?

3 A Yeah, I know I was threatened.

4 Q I don't have anything further, Your Honor.

5 REDIRECT EXAMINATION BY MR. KITTRELL:

6 Q Are you concerned for your life?

7 A Yes, sir.

8 Q I don't have anything else.

9 Court: You may come down.

10 Mr. Kittrell: Joseph Earl Smith.

11 JOSEPH EARL SMITH, BEING FIRST

12 DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. KITTRELL:

14 Q Your name is Joseph Earl Smith?

15 A Yeah.

16 Q Where do you live now?

17 A Right at this moment?

18 Q Right.

19 A Wateree Correctional Institute.

20 Q Why are you there?

21 A I was convicted or pled guilty to distribution of
22 marijuana and received a seven-year sentence.

23 Q Now, between the time that you were placed at
24 Wateree to the time that you pled guilty to these charges
25 and entered your plea, did you ever have any conversations

193

1 with Charles Carpenter?

2 A Yes.

3 Q Directing your attention to April 7, 1990 at the
4 Chesterfield County Jail, did you talk to Charles
5 Carpenter at that time?

6 A April 7th? I'm trying to get that date in my
7 mind.

8 Q I have a piece of paper, which is the summary of
9 a -- see if this refreshes your recollection.

10 A Yeah. That's basically true.

11 Q Now that your memory is refreshed, do you recall
12 a conversation that you had at the Chesterfield County
13 Jail on April 7th of this year?

14 A Yeah, it was more like yelling between the cell
15 blocks and stuff like that. And this had taken place --
16 it was a combination of Kent Hoover's remark that came off
17 of the yard on a Thursday or a Tuesday. That was the day
18 that we both came out, or we came out at separate times
19 and stuff like that.

20 Mr. Lofton: Objection to anything Mr. Hoover may
21 have said, Your Honor, as hearsay.

22 A Right. This is all hearsay, as far as what Mr.
23 Hoover or ---

24 Court: Mr. Hoover has already testified, hasn't
25 he?

194

1 Q Yes, Your Honor.

2 Court: I'll let it in. Go ahead.

3 A He came back in and told me that I didn't have to
4 worry about Fireball that, you know, someone else would
5 take care of that, that I had to worry about someone else
6 more than I had to worry about him, who I assumed at that
7 point in time was Oscar, who now I've been told since that
8 time was not Oscar but was somebody else, up in Wisconsin.

9 Q Did you ever have a direct conversation with
10 Carpenter?

11 A We had some conversations through the bars. They
12 were brief and short and to the point. The one that I
13 remember, pretty much is the one where he came up and he
14 told me that I had a cold day coming and I said, yeah,
15 we've both got a cold day coming. And he said, if I had
16 known you were gonna put me in here, and I think I said,
17 pretty sure I said, well, we put each other in here. And
18 he said, as he was walking away, I'd have killed you.

19 Q He told you that he'd have you killed?

20 A Right.

21 Q Did he ever call you any names from the cell
22 block on April 7, 1990?

23 A Yeah, I think that's the Rattin' S.O.B.

24 Q All right, would you tell the judge what
25 Carpenter called you?

195

1 A A Rattin' S.O.B.

2 Q Now, during the course of this investigation and
3 before you actually entered the plea of guilty, did you
4 cooperate with the State Grand Jury?

5 A Yes.

6 Q Did you provide information to the State Grand
7 Jury against Charles Carpenter?

8 A Yes, I did.

9 Q You provided evidence against Charles Carpenter
10 to help the investigation?

11 A Yes.

12 Q And was this a direct result of that cooperation?

13 A Yes.

14 Q Thank you.

15 CROSS EXAMINATION BY MR. LOFTON:

16 Q Mr. Smith, as I understood your testimony, you
17 and Mr. Carpenter, at some point in time, had a shouting
18 match between cells in the jail?

19 A Yes.

20 Q And he told you you had a cold day coming?

21 A Right.

22 Q And you told him, we both have a cold day coming?

23 A Right.

24 Q So ya'll kind of threatened each other, if you
25 call it a threat, is that right?

196

1 A Basically, yes, sir.

2 Q Okay. And then, at some other point in time, Mr.
3 Carpenter told you that if he knew way back when, months
4 ago, what he knew today, that he might have killed you
5 when he had a chance?

6 A Right.

7 Q He didn't say anything about trying to kill you
8 now?

9 A No, not at that point in time.

10 Q And what happened in that jail was, you
11 threatening him and him threatening you?

12 A Basically, yes, sir.

13 Q Thank you, sir.

14 Court: Anything further?

15 Mr. Kittrell: Nothing from the State, Your
16 Honor. Your Honor, the State has no other witnesses to
17 offer at this time.

18 Court: All right, sir. For the defense.

19 Mr. Lofton: Your Honor, could we have about five
20 minutes to determine whether or not we want to call any
21 witnesses?

22 Court: Yes, sir, we'll do that.

23 (WHEREUPON A BREAK WAS TAKEN BY THE COURT.)

24 Court: All right, sir.

25 Mr. Lofton: If the Court please, Your Honor,

197

1 we'd call Bobby Gene Horne.

2 BOBBY GENE HORNE, BEING FIRST DULY

3 SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. LOFTON:

5 Q Your name is Bobby Gene Horne?

6 A Yes, sir.

7 Q And, Mr. Horne, you were just sentenced earlier
8 today by this Court to 25 years in prison?

9 A Yes, sir.

10 Q And you were named as a Defendant in the two
11 indictments involved with Mr. Carpenter?

12 A Yes, sir.

13 Q Were you present in this courtroom on June 4,
14 1990?

15 A Yes, sir.

16 Q And were you in this jurybox here with Mr.
17 Carpenter and the other co-defendants in this case?

18 A Yes, sir.

19 Q Did you hear any conversations or were you and
20 Mr. Carpenter having any conversations while you were
21 seated in that jury box?

22 A Yes, sir.

23 Q And did you have any conversations where the
24 word, dead, or death, were used?

25 A Yes, sir.

198

1 Q And would you, please, in your own words, relate
2 to the court how that conversation came about.

3 A Well, me and Fireball was sitting over here and
4 Kenny had went to the bathroom ---

5 Q Wait a minute. Don't talk quite so fast. This
6 lady's got to take it all down and the judge has got to be
7 able to hear you. And identify the individuals by full
8 name, okay?

9 A All right. Then Charles was sitting over there
10 and Kenny had went to the bathroom and was coming back by
11 and me and him was talking ---

12 Q Kenny who?

13 A Kenny Taylor. He's my nephew.

14 Q He's your nephew?

15 A Yes, sir.

16 Q He's also a Defendant in this case?

17 A Yes, sir.

18 Q He just testified on the witness stand where
19 you're sitting?

20 A Yes, sir.

21 Q All right.

22 A And me and Fireball was having a conversation and
23 I said, well, I guess they're gonna hang us and Fireball
24 said, no, we dead. And Kenny was walking by at the time
25 and Kenny sat down and said, don't be threatening me like

1 that. And that's when Eddie Gordon come running over.

2 Q Was there any threat by Mr. Carpenter to Kenny
3 Taylor?

4 A No, sir.

5 Q All right, sir. Did Mr. Carpenter ever threaten
6 you in any way?

7 A No, sir.

8 Q I don't have anything further, Your Honor.

9 CROSS EXAMINATION BY MR. KITTRELL:

10 Q Mr. Horne, isn't it a fact that when you were in
11 the hospital you told agents of the State Grand Jury the
12 reason you didn't want to cooperate was because you were
13 afraid for your life and your family's?

14 A I don't know what I told Butch Knight when I was
15 in the hospital, cause I was under anesthesia and he
16 reported everything I said. I don't know what I said.

17 Q I'm not talking about any confessions you may
18 have made. I'm asking about a time when you told the
19 agents that you didn't want to cooperate and you wouldn't
20 cooperate because you were afraid for the life of your
21 family.

22 A In which way?

23 Q Do you remember saying that?

24 A Fireball has never threatened me or my family.

25 Q He's never threatened you at all?

200

1 A No, sir. Or my family.

2 Q Have you ever told Ms. Galloway that you weren't
3 afraid of him personally but you were afraid for your
4 family members?

5 A No.

6 Q Didn't you tell me at one time that you were
7 afraid of Carpenter?

8 A I am not afraid of Fireball, of what he would do
9 to me or anybody else, you know.

10 Q Do you think he's capable of carrying out a
11 threat of violence, using other people and other means?

12 A I think he's capable of shooting a lot of bull.

13 Q I have nothing else, Your Honor.

14 Mr. Lofton: Have nothing further, Your Honor.

15 Court: You may come down.

16 Mr. Kittrell: Your Honor, if I could ask one
17 other question.

18 Court: Yes, sir. Come back around, Mr. Horne.

19 Q Do you know a fellow by the name of Philip
20 Sellers (phonetics)?

21 A No.

22 Q You never heard of Philip Sellers?

23 A I don't recall hearing.

24 Q Do you remember a fellow being hung upside down
25 over a well by Mr. Carpenter?

201

1 A No, sir.

2 Q Once upon a time at your daddy's house, you had a

3 drink machine outside, didn't you?

4 A I didn't have a drink machine.

5 Q Did your daddy have a drink machine?

6 A He had a store.

7 Q At that store, in the front, right?

8 A Right.

9 Q And there was a drink machine there?

10 A Yeah.

11 Q Now, didn't there come a time when \$30,000 was

12 taken out of that drink machine?

13 A No, there wasn't that much money.

14 Q Was there money taken out of there?

15 A Yeah.

16 Q And did you call Kenny Ray Taylor when he was at

17 CCI to tell him you were worried about that money, because

18 it was Fireball's?

19 A No.

20 Q And you were afraid he would hurt you?

21 A How would I call Kenny at CCI?

22 Q They have phones. Didn't you subsequently find

23 out that Larry told Sellers was the individual that

24 stole that money?

25 A Yeah, we found out that they was the ones done it.

1 Q So you do know Philip Sellers?

2 A No, I don't know him. All I know is of him, is
3 the name of him.

4 Q All right. And did you help Carpenter when he
5 went and held him over a well, trying to find out where
6 that money went?

7 A No, sir.

8 Q Didn't know him at all?

9 A No.

10 Q You never saw Carpenter hold him over a well?

11 A No.

12 Court: All right, you may come down.

13 Mr. Lofton: Your Honor, we don't intend to offer
14 anything else in the way of evidence.

15 Court: All right, sir. Is there anything in
16 reply?

17 Mr. Kittrell: We haven't got any other witnesses,
18 Your Honor.

19 Court: All right. I see no good reason to delay
20 this matter any further. I just as well make a decision
21 now when the testimony is as fresh in my mind as I suppose
22 it will ever be.

23 Have the Defendant come forward, please.

24 Now, ladies and gentlemen -- I'm speaking to the
25 audience, as there is a good number of people here, some

1 of whom are friends of Charles Eugene Carpenter and some
2 of whom are not as friendly. Regardless of what your
3 position is and which side you're on, I have a decision to
4 make here and I'm gone make it, and I'm telling you all
5 now that I will permit no outbursts or comment of any kind
6 with the decision that I make, whether you're his friend
7 or whether you're his enemy or whether you're one of those
8 that testified for or against him.

9 Now, I want to tell everybody, so there'll be no
10 question in your mind about it, within the sound of my
11 voice, that if I have any of that I'm gone put you in jail
12 and you're gone stay there and sometime next week I'll
13 hold a contempt hearing. I'm just not going to permit
14 it. I hope that I wouldn't have that on either side but
15 if there's any question about whether or not you can
16 restrain yourself, I want you to step outside because I
17 would not wish you to be in contempt of my court.

18 And that speaks to Mr. Carpenter's friends as
19 well as those who have spoken against him.

20 Now, Mr. Carpenter, I previously sentenced you
21 upon the indictment, 90-GS-47-05002, for trafficking in
22 cocaine, pursuant to a plea agreement that you have
23 previously entered into before me in Marlboro County, and
24 I think it was, perhaps, in April of that year. I
25 concluded at that time that the plea was freely and

1 voluntarily entered into and that you had the advice of
2 counsel of an extremely competent attorney. I said at
3 that time that I would require the State to comply exactly
4 with what they had agreed but at the same time would
5 require you to do exactly as you had agreed.
6

7 The State of South Carolina had you indicted
8 upon, really, four separate counts and under that they had
9 permitted you to plead guilty to two, which you did, and
10 said that they would recommend concurrent sentences, if
11 you did certain things.

12 I've read the transcript of that proceeding here
13 this morning, and in addition to giving you that benefit
14 they also dropped some charges pending in Richland County,
15 agreed to let your attorney work out a gun charge in
16 Florence County, and the solicitor agreed to dismiss, as I
17 remember, a kidnapping and burglary charge in Marlboro.
18 So the State of South Carolina, pursuant to that plea
19 agreement, did some significant things for you.

20 I've listened to the testimony here and I
21 conclude that you have not complied with your plea
22 agreement. The evidence, to me, is overwhelming and as I
23 listened to the testimony of Mr. Gordon here, and I think
24 he's a reasonable person, listening to his testimony and
25 would conclude that. Now, beyond your failure to
cooperate as a result of the plea agreement that you

205

1 entered into, and I think the lawyers did you a great
2 service by doing that, because you were subject to some
3 hundred years in jail, and I congratulate you throughout
4 your performance in this matter, Mr. Lofton. You
5 exemplify the highest standards of your profession and I
6 want to thank you for that.

7 But it seems to me that you are trying to --
8 you're really thumbing your nose at the system, or I view
9 it that way. Here's the State of South Carolina entering
10 into this with good conscience and established with you a
11 plea agreement that I conclude was certainly to your
12 benefit to enter into, based on what I now know of this
13 case. And not only did they -- they have complied fully
14 with everything they said they would do, and I conclude
15 that you haven't complied with anything that you said you
16 would do, but the real thing that worries me about your
17 situation is the threats that you've made.

18 Now, I can discount, if you choose, the threats
19 of K. T. Taylor in this courtroom. I'm inclined to think,
20 as serious as it was, it would have been called to my
21 attention and in fairness to this Defendant, but I was
22 impressed, quite candidly, with the other witnesses who
23 testified. I think that you've been making threats. I
24 think that you're a dangerous man. I may be wrong.
25 That's my view.

206

1 Mr. Rogers, I want to thank you for your
2 participation, too, your coming on board later to
3 represent him, and I understand that pursuant to my ruling
4 I put the responsibility on Mr. Lofton because he had
5 entered into that agreement.

6 Now, having given you gentlemen my preliminary
7 thoughts in the matter I'll be glad to hear from you or
8 the Defendant with regard to this matter. Mr. Lofton, Mr.
9 Rogers, or Mr. Carpenter, however you want to handle it.

10 Mr. Lofton: Well, of course, Your Honor, we
11 would take exception with the Court from the standpoint of
12 the credibility of the witnesses that the State has put
13 forward today, on whether or not there were any threats.
14 I think when you go back through their testimony there
15 really isn't anything that the Court can say that was a
16 substantial threat or a threat where anybody was in fear.
17 All of these people are drug addicts. I think the most
18 telling testimony was the individual who admitted they
19 were joking around, screaming back and forth between the
20 cells or threatening back and forth between the cells.
21 They didn't do anything to him and, obviously, he was
22 threatening Mr. Carpenter.

23 Court: You didn't see Mr. Carpenter as one of
24 the witnesses winked at him as he got off the stand. You
25 would not have seen that. I noticed it.

207

1 Mr. Lofton: I wasn't aware of that, Your Honor.

2 Court: Who was the young boy that testified?
3 Hoover? It may have been Hoover. But, go ahead.

4 Mr. Lofton: Your Honor, of course, what we're
5 supposed to do is go on what the testimony is before the
6 Court and Hoover, if he did wink, and maybe he did, but he
7 also said, you can't take Charles Carpenter serious. He
8 said it could have been a joke, we were joking around.
9 Kenny Taylor, he wasn't ---

10 Court: I continue to interrupt you, but I want
11 to get the things all in my mind. How can you discount
12 the testimony of Agent Gordon here, who has just said that
13 he continuously refused to cooperate. Not only did that
14 but kept laughing about it. He even mentioned one time,
15 in your presence, and you were there, that he wouldn't
16 even talk to them unless he went out the room.

17 Mr. Lofton: Your Honor, from time to time he
18 asked to be allowed to confer with me about certain
19 things, which he had the right to do. And so the problem
20 that I've got with Agent Gordon -- and, Your Honor, I
21 think this takes us back to square one. We have said from
22 day one that they have singled Mr. Carpenter out for
23 additional prosecution, because that's what it is. And it
24 has been a very select prosecution, because they have only
25 given polygraphs to seven of the sixteen people. The

1 seven that took the polygraph, including Mr. Carpenter, a
2 number of those were inconsistent -- there were two
3 inconsistent and a couple of failures. One, possibly two,
4 actually passed the polygraph. So that also went to their
5 cooperation, whether or not they had fully complied with
6 the terms and conditions of their plea agreement. That
7 was the point I made when we started this hearing, Your
8 Honor.

9 Let's assume for the sake of argument that Mr.
10 Carpenter has failed to cooperate. Even assuming that,
11 the State has singled him out for prosecution, whereas
12 they have not bothered, first of all, to even polygraph
13 nine because they say they don't have the manpower, the
14 time, or the resources, yet we've got the manpower, the
15 time, and the resources to spend a day over here trying to
16 get Mr. Carpenter some additional time when they've got
17 two polygraph examiners that have been sitting here in the
18 courtroom that could have been polygraphing those other
19 nine people.

20 Court: Well, of course, some of those nine were
21 minor players in this whole thing, based on what I found
22 out at the sentencing.

23 Mr. Lofton: That's what the State told you, Your
24 Honor, based on what they were able to learn. They didn't
25 polygraph those people to see if they were withholding any

1 information about any of their relatives or anybody else.
2 And that's the point I'm trying to make. This whole thing
3 has been a selective prosecution.

4 Your Honor, I don't think this Court can rely on
5 these so-called threats from the witnesses who were
6 paraded in here today. The only witness that gave any
7 substantial testimony was concerning the threat here in
8 the courtroom and that was refuted by the guy that was
9 talking to Mr. Carpenter, Mr. Horne, at the time it
10 happened.

11 Your Honor, I think it would be a total
12 miscarriage of justice for you to allow the State to
13 single Mr. Carpenter out and not even have gone forward
14 with polygraphs of these other nine Defendants, not even
15 going back and attempting to revoke the plea agreement of
16 the individuals that were inconsistent on the polygraph,
17 much less then ones who failed the polygraph. If that
18 isn't selective prosecution, if Mr. Carpenter's due
19 process rights aren't being violated then there's no such
20 thing as due process in America. And that's where we
21 stand, Your Honor, from the standpoint of why this Court
22 should not enhance Mr. Carpenter's sentence. Forget about
23 whether or not he cooperated. Consider whether or not
24 he's being treated the same and treated fairly in
25 connection with these charges. That's the point I want to

210

1 make.

2 Mr. Kittrell: Your Honor, he raises the issue of
3 selective prosecution and I think that needs to be
4 addressed. He raises it in the context of polygraph
5 examinations. Mr. Logan would be happy to tell you that
6 it takes a half a day to a full day to do the polygraph
7 itself. In addition to the time taken to do a
8 pre-polygraph examination. It is very time-consuming. In
9 this one case alone, I did a pre-trial memorandum and I
10 had over 74 witnesses listed. I wanted to do more
11 polygraphs -- you can ask Mr. Logan. We didn't have the
12 time. We've got other cases going on. We are not
13 selecting out certain witnesses to their detriment to
14 polygraph them. The way it really works is, we polygraph
15 certain witnesses when we are not certain as to whether or
16 not they're withholding information. As you heard Mr.
17 Gordon say, when there is a lack of corroboration of
18 testimony or statements made by various cooperating
19 defendants or statements made by a defendant that match,
20 that means that Defendant is likely truthful. We're gonna
21 extend our resources, our scarce resources where we need
22 them the most. That is why we select certain Defendants
23 to ---

24 Court: Well, selective prosecution is not really
25 before me. What's before me to day is whether or not,

211

1 consistent with the State's agreement to do certain
2 things, which undeniably and uncontradicted they have
3 done, has he carried his part of the bargain. And given
4 the totality of the testimony, the threats is just a minor
5 part of the whole thing. But if you put it together, it's
6 clear to me that this Defendant got the best deal he could
7 and got a good deal and then turned around and repudiated
8 his part of it, because in addition to dropping two
9 charges, for which he could have gotten an additional 50
10 years they agreed to permit the United States District
11 Attorney to dismiss the gun charge and asked the solicitor
12 of Richland county to dismiss that charge, and the
13 solicitor of the Fourth Circuit agreed to dismiss two
14 charges in Marlboro County. He gets that deal, gets, he
15 thinks, a concurrent sentence, and then thumbs his nose up
16 at the investigators when they want him to comply with his
17 part of the deal. That's the way I perceive it. It seems
18 to me that's what's happened.

19 Mr. Lofton: Well, Your Honor, I would beg to
20 differ with Your Honor --

21 Court: I understand.

22 Mr. Lofton: -- that the issue of selective
23 prosecution isn't before you. Mr. Carpenter's due process
24 rights are before you and that brings in the issue of
25 selective prosecution. I understand what Mr. Kittrell is

212

1 saying about he has limited manpower or he doesn't have
2 the time and they can't polygraph everybody. The problem
3 is Mr. Carpenter is being punished because of that. And
4 I'll take it one step further -- the individuals that they
5 have polygraphed, the ones that were inconclusive, the
6 ones that failed, nothing has been done about their plea
7 bargain agreements. The State hasn't come in and tried to
8 get them addition time or hasn't tried to withdraw from
9 the plea bargain agreements. So, Your Honor, that is
10 before you. Everybody is not being treated equally in
11 this case.

12 Mr. Kittrell: That is an untrue characterization
13 of the other polygraph examinations. I considered the
14 polygraph examination of this Defendant a mere portion of
15 the violation of his plea agreement. There are three
16 other significant areas that violate the plea agreement.
17 With regard to the polygraph, Your Honor ---

18 Court: Mr. Lofton, he casts no aspersions on
19 that. Mr. Rogers, I'll get back to you. Of course, you
20 are not involved in this stage of the proceedings and as I
21 understand it you're representing the individual from this
22 point on, is that correct? I'll be glad to hear from
23 you. It's not necessary, but I give you that opportunity.

24 Mr. Rogers: I probably would be advised not to
25 comment and in that context, Your Honor, I think Mr.

1 Lofton, certainly, in these proceedings has done a good
2 job of representing Mr. Carpenter. I would just urge upon
3 the Court, from my limited prospective, that in terms of
4 the four elements that Mr. Kittrell has cited, the first
5 being the threats and most recently, Your Honor indicated
6 that you don't really consider that to be a major factor
7 and I agree with that assessment, certainly based on the
8 testimony we heard today, and I would underscore, and I
9 know Your Honor agrees, that the statements that were used
10 for memory refreshing purposes, where they may be in
11 conflict with the testimony that was given from the stand,
12 ought not to be given any weight where they're in conflict
13 with that testimony from the stand.

14 The polygraph matter, in terms of direct evidence
15 on that, there hasn't been any evidence introduced in that
16 regard, Your Honor, and I'm sure, obviously, that you're
17 aware. The State has not introduced any evidence in that
18 regard. The only evidence that's come out has been in
19 response to questions as to whether other individuals
20 were, in fact, polygraphed. That leaves, Your Honor, the
21 two questions of whether or not Mr. Carpenter has been
22 forthcoming and cooperative with the State in regard to
23 testimony about other principals and in regard to items of
24 property that he allegedly has some interest in that were
25 ill-gotten gains.

214

1 Your Honor, I would respectfully submit that
2 based upon the testimony of Mr. Gordon alone, and that is
3 the only testimony that the State has offered in that
4 regard, that there is simply not an adequate showing on
5 the record that Mr. Carpenter has been unresponsive or
6 dishonest or has been holding back in regard to either one
7 of those particulars. I would respectfully request that
8 Your Honor, perhaps, not issue a final ruling today on the
9 matter but give the Court an opportunity to review a
10 transcript of Mr. Gordon's testimony and of specifically
11 his testimony in response to Mr. Lofton's
12 cross-examination.

13 Going back and trying to put the finger,
14 precisely, upon those evidentiary circumstances that yield
15 to Mr. Gordon's conclusion, which granted he strongly
16 holds, that Mr. Carpenter has not been forthcoming. In
17 terms of how he knows, Your Honor, that he was not
18 forthcoming in regard to the other principals and in
19 regard to the property, I would just submit to you that
20 there is really a paucity of specific evidence that he
21 uttered out of his mouth or that is otherwise in the
22 record that substantiates those conclusions. I don't
23 think there's any question that he holds the conclusion
24 strongly but I would just submit to Your Honor that in the
25 very serious matter, particularly given the overtones of

215

1 selectivity, which I think are before you in that context,
2 that the Court, perhaps, ought to give greater
3 consideration to whatever evidentiary basis there may be
4 upon which can be relied on in reaching a decision in that
5 regard.

6 Your Honor, maybe we have -- maybe the Court, on
7 its own motion, ought to call other witnesses out of that
8 list that the State furnished us with this morning, and
9 indicated to the Court who were possible witnesses in that
10 regard. There were, I think, some nine law enforcement
11 agents ---

12 Court: Let me say this to you. There has not
13 been made, before me, a single showing of additional
14 cooperation by this Defendant since the plea agreement was
15 entered into. Nobody has come forward and said, Judge, he
16 cooperated, he did this, that, and the other. There's not
17 one single incident today before me where, and according
18 to that plea agreement, he has done anything.

19 Mr. Lofton: Your Honor, we have in evidence the
20 pre-polygraph statement that he gave to the agent prior to
21 taking the polygraph, which outlines in great detail what
22 the information was that he had furnished them.

23 Mr. Rogers: And, Your Honor, I would just add to
24 that that I think that those notes are replete with
25 individual items of evidence concerning people and

216

1 concerning pieces of property. And, Your Honor, we would
2 absolutely deny the accuracy of the contingent that Mr.
3 Carpenter withheld acknowledgement of ownership of pieces
4 of property that are referred to in that statement and
5 that Mr. Gordon made reference to and we would argue to
6 the contrary that the statement makes it clear that that
7 property has been identified and it has been identified in
8 many instances as being property that he's got an interest
9 in. And in addition to that, Your Honor, the individuals
10 involved, the individuals whose names are cited in those
11 notes, who are principals in the investigation or likely
12 to become principals, at the very least Mr. Carpenter gave
13 evidence which strongly corroborates the evidence which
14 has been supplied by others as to the guilt of those
15 principals. And Mr. Gordon, himself, said that that kind
16 of independent corroborating evidence is pivotal to their
17 decisions as to whether or not they have a sufficient
18 quantum of evidence to move against those individuals.
19 And Mr. Carpenter has provided, and those notes reflect
20 it, substantial corroborating evidence which relates to
21 those individuals. So to say that he ---

22 Court: Well, he didn't do anything when he gave
23 a situation as to Jessie James Joseph Smith -- he'd
24 already pled guilty. And he didn't help anybody when he
25 talked about Kenny Ray Taylor and Bobby Horne, they had

217

1 already pled guilty.

2 Mr. Rogers: Your Honor, he was ---

3 Mr. Kittrell: Your Honor, Eddie Gordon testified
4 that Mr. Carpenter would not tell him anything more than
5 he already knew. Carpenter told various other agents as
6 well that he wasn't going to give forth any information.
7 Agent Galloway testified that she heard him say the same
8 thing, that he wasn't gonna give forth anything that the
9 State didn't already know. When they were going through
10 that pre-polygraph information sheet, they got that by
11 asking him specific questions that they had knowledge of.
12 He responded to that. That's where that information comes
13 from. He gave them nothing more than that. He
14 volunteered no additional information. He only told them
15 what they already knew.

16 Mr. Rogers: But, Your Honor, that presupposes
17 that he had stuff that they did not know, that he declined
18 and intentionally withheld from them.

19 Court: I'm inclined to think that he knows who
20 Lawyer Boy is. I'm not asking him, but I'm inclined,
21 based on the totality of what I've heard. And this Hart
22 -- I'm not asking him to disclose that to me, but, you
23 know, I'm like the athletic director at the University of
24 South Carolina said -- he was born at night but not last
25 night. Now, there are certain things that we know and not

218

1 know and I've got to believe he knows who Lawyer Boy is
2 and he knows all about Hart and who Hart is. He told Mr.
3 Gordon that he delivered the marijuana or some controlled
4 substance there and then turned around and said he didn't
5 know where he lived.

6 Mr. Lofton: Your Honor, I'd ask you in that
7 regard to look at what he said about Hart or Harpe. He
8 went into pretty good details, giving a description of
9 him, height, how old he was, he even told them he knew he
10 was a member of a hunting club near Hartsville. He goes
11 on to tell them about delivering the marijuana and so
12 forth. He continues to say that he was introduced by a
13 man down in Moncks Corner who he didn't know. The first
14 introduction was to harvest some marijuana down in Moncks
15 Corner. And then he goes on to say who he harvested
16 marijuana with down in Moncks Corner.

17 Aside from that, Your Honor, back over on page 3,
18 Raymond Carpenter, who the government, the State, cut a
19 deal with and granted immunity to, who was in the drug
20 business with Mr. Carpenter, Mr. Carpenter told them about
21 Raymond Carpenter having large sums of money stashed in
22 banks in Colombia. To our knowledge the State has done
23 absolutely nothing to try to verify that.

24 Your Honor, Mr. Gordon indicated that he didn't
25 tell them about an incident where Mrs. Boyd came to Mr.

219

1 Carpenter's residence. On the front page of the interview
2 Carpenter stated, in 1988 he remembers fronting Boyd 120
3 pounds. He remembers this because Boyd came to his
4 residence and he had the marijuana stored in the same blue
5 van.

6 Your Honor, there is substantial cooperation and
7 that's why we get back to the argument of selective
8 prosecution. This man has furnished substantial
9 information.

10 Court: Mr. Lofton, I may be wrong, but I really
11 conclude that Mr. Carpenter has absolutely, is absolutely
12 thumbing his nose at the Court and to the State of South
13 Carolina and I say that in all deference to your position.

14 Mr. Rogers: If Your Honor please, forgive me for
15 interrupting you.

16 Court: No, sir, Mr. Rogers, you didn't interrupt
17 me. That's fine. I want you to be fully heard.

18 Mr. Rogers: Your Honor, I would just ask in that
19 regard, and I realize that this is somewhat unusual, but I
20 really think that it is relevant to the crux of your
21 hang-up on this matter, and that is as to whether or not
22 ---

23 Court: Hangup is your term, not mine.

24 Mr. Rogers: Non-judgmental, Judge. Strictly a
25 technical -- generational phrase, Your Honor, and I

1 apologize for using the slang of my generation.

2 Your Honor, I believe that the polygraph experts
3 of both the State and the defense -- and they're both here
4 in the courtroom -- are in agreement that as to other
5 elements about which Mr. Carpenter was questioned,
6 specifically his knowledge of other principals involved in
7 this investigation, that the polygraph examination which
8 relates to those issues is not the part of the polygraph
9 examination that they really had any concerns about,
10 either one of them. And the reason I submit that to you,
11 Your Honor, is that you are focusing on the individuals
12 involved and the allegations and insistence of Mr. Gordon
13 that Mr. Carpenter has been holding back as to those
14 individuals. We didn't get into ---

15 Court: Let me say this to you, Mr. Rogers,
16 clearly. This Defendant pled guilty to serious charges,
17 trafficking in cocaine and marijuana. Of course, I've
18 been the presiding judge over this whole grand jury
19 indictment and I've got a feel now, based on the pleadings
20 and what I heard, for what occurred and who did what.
21 There's no question about it, that this man was the key
22 man at the top of the whole organization. It's clear.
23 If anybody in the world has got information about who did
24 what, it's him. And when he tells Officer Gordon, one,
25 that he's not gonna tell them any more than they know and,

221

1 two, in fact, he didn't tell them any more than they know,
2 I've got to conclude that he has failed to cooperate.
3 Most of the people to which you refer, Hoover and Plyler
4 and Jessie James and one or two more, the two ladies
5 involved, were minor players. This boy was the biggest
6 one. And the next one was Mr. Horne, based on my
7 perception of what I heard. So for him to come into court
8 and say he's cooperated when the record shows that he just
9 simply has not, is ridiculous on the face of it.

10 I've heard enough, and I could be right or wrong,
11 but I really think I'm right in the thing. I think that
12 he's using the system and he continues to attempt to use
13 the system. For instance, as an example, I gave a
14 two-months' notice that we were gone have that hearing,
15 the original sentencing here in this courtroom. He waited
16 until the last day of the week prior to that sentence to
17 retain you. And he had a right to retain you and he's
18 retained a good lawyer, but it's just the evidence of his
19 continuing, trying to get around the system, that he hired
20 you at the last possible minute, knowing two months, and
21 then made a horrendous allegation against one of our most
22 outstanding lawyers in the State of South Carolina. And
23 he did it at the last minute, which tells me again he's
24 trying to circumvent the system.

25 Now, if I'm wrong --I've been wrong before and

1 fortunately for this Defendant and the others there's
2 another court that can correct me, but I find beyond
3 absolutely any doubt in my mind that the State of South
4 Carolina has lived up to their agreement in every
5 respect. I find further that he has failed to do so. And
6 based on that plea agreement I'm going to, one, leave the
7 first part of the sentence, on the number two indictment
8 as it was. I treat this question as a bifurcation in the
9 event the Supreme Court may want to set aside this portion
10 of it. No question in my mind that I was correct in the
11 first portion and I'm convinced beyond any doubt I'm
12 correct in this one. And I find he's failed to cooperate
13 with the terms of the agreement. I find further that an
14 enhancement of the sentence is proper under the
15 circumstances and in that connection with regards to the
16 indictment for trafficking in marijuana, it is the
17 sentence of this court that he be confined for a period of
18 twenty-five (25) years, consecutive to the sentence
19 previously imposed upon the indictment for trafficking in
20 cocaine.

21 Now, I want to say this to you. As you well
22 know, ordinarily during a week of general sessions court
23 our Supreme Court has said that that term ends on Friday
24 and that the judge cannot, thereafter, change the sentence
25 later. I don't know what our Supreme Court will say in

1 connection with this. I'm going to leave this question
2 open though, for thirty days, in the event that the State
3 of South Carolina comes forward with any motion that they
4 may desire to make with regards to further cooperation.
5 You understand that?

6 Mr. Rogers: What's the period of time, Your
7 Honor?

8 Court: Well, I want to give him an opportunity.
9 I'm going to impose a thirty-day consecutive sentence, but
10 I'm going to give him an opportunity to cooperate. I
11 think it's in the interest of the people of South Carolina
12 to uncover what we can about it. What do you say about
13 that, Mr. Kittrell?

14 Mr. Kittrell: We'd appreciate that. We also
15 want to try to get him to cooperate again. We think the
16 thirty days would be sufficient to allow him to consider
17 what he wishes to do.

18 Court: All right, you understand the rule.
19 Ordinarily, in general sessions court, that after the term
20 ends, but nobody knows when the term of the grand jury
21 ends.

22 Mr. Kittrell: So you're leaving open the
23 opportunity for the defense, with the consent of the
24 State, to file a motion for reconsideration of sentence or
25 either the imposition of the second ---

224

1 Court: It's going to be with the consent of the
2 State or I'm not gone listen to it. The sentence is here
3 today and I'm through with it. I'm just leaving an avenue
4 open in the event he demonstrates to you, to the extent
5 that you want to make a motion for me to reconsider this
6 hearing and I'll do it, but I'll do it within thirty days.

7 Mr. Kittrell: Your Honor, if I could state
8 something for the record I'm concerned about, the
9 accusation of selective prosecution.

10 Court: There's no need to be. This record will
11 abundantly show that I have seen nothing in this record to
12 indicate that and do not think so. I think the
13 prosecution was handled well and in a timely manner and I,
14 quite frankly, think the defense was, too.

15 Mr. Kittrell: I might ask if you would make a
16 specific ruling as to his compliance with paragraph 12,
17 which requires the Defendant to comply with state and
18 federal laws. Specifically, I'm referring to the threat
19 issue. I'm referring to his compliance with paragraph
20 two, a factual finding on your part, as to whether or not
21 he's complied with the paragraph in the plea agreement.

22 Court: No, sir, I find he has not complied with
23 it. I find -- I don't know, let's see, there were four
24 different concerns.

25 Mr. Rogers: He's specifically talking about the

225

1 threat item now, I think, Your Honor.

2 Mr. Kittrell: Where Ricky Lynn Johnson said he
3 was threatened and Hoover said he was threatened.

4 Court: Yes, sir. I find these threats were
5 made. There's no question about that. I don't know that
6 there was one made against Mr. Taylor, but the only thing
7 -- I said I find that were made, that's not the primary
8 basis for my reasoning. That, coupled with some other
9 things. But it's just clear to me that he, basically, was
10 the ringleader in the thing and has come forward,
11 basically, with nothing, based on Mr. Gordon's testimony,
12 that I find viable.

13 Mr. Kittrell: So for the record then, you do
14 find as a matter of fact that he's breached his agreement
15 with respect to paragraphs two and twelve?

16 Court: Well, I find -- I'm not going to make any
17 finding with the allegation, the one about the polygraph,
18 I'm not certain about that. But he's obviously failed to
19 cooperate and obviously failed to abide by the state and
20 federal laws and he has not made a full disclosure of his
21 assets, as he agreed to do.

22 With regard to the polygraph, I would not find
23 him in contempt in disobedience of the plea agreement
24 solely based on the polygraph. That, in my mind, is not
25 sufficient, standing alone. There might be some evidence,

1 coupled with the other things that I find.

2
3 Mr. Rogers: Your Honor, I was going to inquire
4 of the Court, with reference to the thirty-day extension,
5 or not extension but period of time within which you would
6 agree to entertain those motions.

7 Court: Now, let me get this clear. The hearing
8 is over now.

9 Mr. Rogers: I understand that. But, Your Honor,
10 I think a little bit of clarification on that, really on
11 two points. I understand you don't want to have the
12 hearing over. I would hope that on the basis of the
13 evidence that has been introduced and that is on the
14 record that you would be willing to receive whatever
15 motions we might offer during the period of time that
16 would be bottomed on the evidence that you've already
17 heard.

18 Court; No, sir, I don't want to get into that
19 now. I've made a ruling. I'm gone stand by it. And I'm
20 not gonna re-open that. The only thing I'm saying is, if,
21 because of a change of conditions the State concludes that
22 Mr. Carpenter has now cooperated to the extent initially
23 envisioned, if they come before me asking me to reconsider
24 that sentence, I will do that. I won't say I'll change
25 it, but I'll entertain a motion. I'm not going back into
any testimony. I'm not going back into the record. The

227

1 record, I'm satisfied -- the only way you're gone get me
2 to even consider it is for the State of South Carolina to
3 come forward and say, Judge, he has now cooperated and has
4 now lived up to his agreement. We want you to re-consider
5 the consecutive sentence. That would be based not on what
6 has occurred but what is to occur.

7 Mr. Rogers: I understand that. Would you hear
8 from us in regard to what may occur between now and then?

9 Court: I don't want to do anything to open up
10 this hearing again and I'm not gone beat a dead horse to
11 death.

12 Mr. Kittrell: If this Defendant agrees to begin
13 to cooperate fully, then, as I understand it, you've left
14 the door open for us to come in before you and make a
15 motion?

16 Court: If you wish to.

17 Mr. Kittrell: Yes, sir.

18 Court: But I'm not going to open up this hearing
19 again. I'm satisfied I'm correct. And the only reason
20 I'm doing this is to give him one opportunity to save
21 himself twenty-five (25) years, if he cares to. And
22 that's all I'm doing. And I'm not sure he's entitled to
23 that, but I will do that, in an abundance of fairness, in
24 trying to be fair to all parties concerned.

25 Mr. Lofton, any question in your mind what I'm

1 saying?

2 Mr. Lofton: I understand what you're saying.
3 From my standpoint, Your Honor, as I understand it, my
4 services end today.

5 Court: Yes, sir. And you agree to that? He
6 signed a statement that discharges Mr. Lofton.

7 Mr. Rogers: I'm not sure I'm familiar with that
8 particular statement. But as I understand there's a
9 motion to substitute me for counsel, Your Honor.

10 Court: Yes, sir. Didn't it say discharge him
11 and substitute you?

12 Mr. Rogers: But you denied that motion, Your
13 Honor, and made a subsequent order.

14 Court: For this hearing only though.

15 Mr. Rogers: Whatever you say is fine with me,
16 Judge.

17 Court: Are you now appearing as his attorney
18 from this day on?

19 Mr. Rogers: I am that, yes, sir.

20 Court: All right, sir. Then is it your still
21 desire to substitute Mr. Lofton and hire Mr. Rogers?

22 Mr. Carpenter: Yes, sir.

23 Court: Now, Mr. Carpenter, I am formally
24 discharging Mr. Lofton from any further involvement in
25 this case, including any appeals -- this is not limited to

229

1 but it includes the following -- any appeals, any civil or
2 criminal actions with regard to discovery of confiscation
3 of assets, any further discovery, anything I can think of
4 and you can think of you involve Mr. Rogers now, you
5 understand that?

6 Mr. Carpenter: I don't really understand it.

7 Court: Well, it is understood. You submitted a
8 statement that you desired to fire him and hire him.
9 Didn't you sign that statement and hand it to me?

10 Mr. Carpenter: Yeah, I believe, yes, sir.

11 Court: Mr. Lofton, you've got a copy of that,
12 haven't you?

13 Mr. Rogers: I've got one, Your Honor.

14 Court: Let me have it. Mr. Carpenter, I'm
15 saying this so that this record will be fully protected.
16 I want your rights protected, but equally important I want
17 Mr. Lofton and Mr. Rogers' rights protected. And I want
18 to make sure that this record shows -- you don't have a
19 copy of that?

20 Mr. Lofton: I don't think I brought that, Your
21 Honor.

22 Court: Maybe you want to stay in. If you don't
23 have it, if he disagrees that there was furnished to me a
24 statement discharging Mr. Lofton and retaining you ---

25 Mr. Rogers: I have it, Your Honor, if you'll

1 bear with me one second.

2 Court: All right. Well, do you agree, does your
3 client agree -- is he now your lawyer? That's all I want.

4 Mr. Carpenter; Yes, sir.

5 Court: And you understand that you cannot, from
6 this point on, look to Mr. Lofton for any other matters.

7 Mr. Carpenter: Yes, sir.

8 Court: All right, the record will reflect that
9 the motion dated June 1st by Mr. Rogers and consented to
10 by Mr. Carpenter is as follows: The undersigned hereby
11 moves the Court for the substitution of counsel for the
12 Defendant in the above-captioned matter, Charles
13 Carpenter, at the request of said Defendant. The
14 undersigned will replace counsel for the Defendant, Lionel
15 S. Lofton, Esquire. Is that still your motion?

16 Mr. Rogers: Yes, it is, Your Honor.

17 Court: Motion is granted.

18 Mr. Lofton: Thank you, Your Honor.

19 Court: All right, now two things first. What is
20 the minimum mandatory fine in connection with trafficking
21 in marijuana?

22 Mr. Kittrell: Your Honor, I believe the statute
23 provides that it is \$200,000 fine.

24 Court: Is that the minimum mandatory? Mr.
25 Lofton, he's also raised the question about ---

231

1 Mr. Lofton: Your Honor, I think the counts that
2 he pled to charged with 2,000 pounds.

3 Court: But less than 10,000?

4 Mr. Lofton: It doesn't say less, but it says in
5 excess of 2,000.

6 Court: All right, then it's a fine of \$50,000.
7 Now, he raises the question about letting the sentence run
8 concurrently with the second one.

9 Mr. Kittrell: Well, the first count that he pled
10 guilty to and was sentenced to on June 4, provided that
11 that count run concurrent with the federal time. We
12 asking whether or not this count is to be concurrent ---

13 Court: I'm not going to change that. I'm gone
14 let that still run concurrently with the federal -- to the
15 extent that I can say that. You know, there was some
16 discussion even then as to whether or not we had that
17 authority. You cited some cases that you thought we
18 could. If permissible under the laws of the State of
19 South Carolina, it is still my direction that even with
20 this enhanced sentence, based on my finding, I still am
21 gone let the sentences run concurrently with the federal
22 sentence. You understand that?

23 Mr. Lofton: Yes, sir.

24 Mr. Rogers: Yes, sir. Your Honor, can I bring
25 another matter, a logistical matter to your attention?

1 Court: Yes, sir.

2 Mr. Rogers: I had sought a conversation with Mr.
3 Kittrell about what the State intended to do physically
4 with Mr. Carpenter at the conclusion of this proceeding.

5 Court: Take him on back to Columbia. Marlboro
6 don't want him and Chesterfield don't want him.

7 Mr. Rogers: Well, Your Honor, what I was making
8 reference to was, you know, whether or not he -- as you
9 know he's here on a Writ, already being in the process of
10 serving his federal sentence and it occurred to me that
11 they would want to send him back, but now given the nature
12 of Your Honor's ruling ---

13 Court: Can we keep him here a few days, Mr.
14 Attorney General?

15 Mr. Kittrell: Your Honor, as I understand the
16 Writ was issued and I believe it terminates at the
17 imposition of this sentence. It's my understanding that
18 he'll be back in federal custody.

19 Mr. Rogers: But the point I'm trying to make is
20 that if the Court is leaving the matter open for the
21 purposes that it stated, in order to make it possible to
22 afford me some ---

23 Court: You don't have to take him back tomorrow,
24 do you?

25 Mr. Rogers: It's awkward.

233

1 Mr. Kittrell: I don't know, Your Honor.

2 Court: How about it, Mr. Gordon?

3 Mr. Gordon: Well, we can hold him, you know.

4 Our next move, as far as the order is concerned is when we
5 get something worked out. There's nothing that says it
6 has to end today. But Columbia would not be the place to
7 hold him, because they'd have to issue another order and
8 that type of thing.

9 Mr. Lofton: Your Honor, I think all you've got
10 to do is that you're retaining jurisdiction based on the
11 thirty days.

12 Mr. Kittrell: My concern is that he be held in a
13 secure institution.

14 Mr. Rogers: Well, we don't have any objection to
15 him going back to where he was.

16 Court: Where was he?

17 Mr. Gordon: He was at CCI, Your Honor.

18 Mr. Rogers: He was at Broad River, Your Honor.

19 Court: Can't he go back here?

20 Mr. Gordon: You're gone have to do another order.

21 Court: I'm not going to put him in a local
22 facility. All I want to know is how, with all the prisons
23 we've got, I can't find some place to put him tonight.
24 Mr. Horne, come back around. Based on that statute we
25 should have given him a \$50,000 sentence, too, based on

234

1 that same statute, rather than \$200,000.

2 All right, let's get this resolved here. I think
3 you want to be able to confer with him, is that right?

4 Mr. Rogers: Exactly. Precisely.

5 Mr. Kittrell: Your Honor, Agent Knight has just
6 spoken to the marshall service and they stated that they
7 wished to have him back. Now, my understanding of the
8 Writ that was issued is that Writ expires with the
9 imposition of any other sentence, with the resolution of
10 this hearing today. Therefore, we don't have any
11 jurisdiction over his body -- not the State. I think the
12 federal people do. If we could ask of them that they hold
13 him in Charlotte, which is only an hour away.

14 Court: All right. I think they're gone have to
15 send him back. If ya'll desire to, I'm sure that there's
16 a methodology for you to get him back in Columbia.

17 Mr. Rogers: Well, obviously, I'm gone have to
18 have some contact with him, Your Honor.

19 Court: I understand. All right, pursuant to
20 your arrangements with the State of North Carolina, the
21 Defendant will be delivered back to the federal custody
22 there. I would ask that you please tell those people that
23 a Writ will be forthcoming tomorrow from the appropriate
24 officials of South Carolina to bring him back to Columbia
25 to give his lawyer an opportunity to talk to him. Would

235

1 you do that?

2 Mr. Knight: Yes, sir.

3 Court: Is there anything else we need to do for
4 the record?

5 Mr. Kittrell: Nothing, Your Honor.

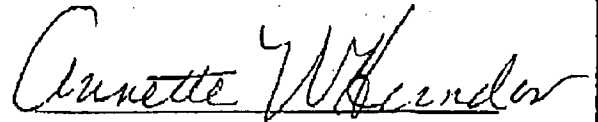
6 ***** END OF REQUESTED TRANSCRIPT *****
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236

C E R T I F I C A T E

I, THE UNDERSIGNED, ANNETTE W. HERNDON, OFFICIAL COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR STATEWIDE GRAND JURY, ON THE 9TH DAY OF AUGUST, 1990.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.



COURT REPORTER

DECEMBER 31, 1991

DILLON, SOUTH CAROLINA

237

EXHIBIT
ROA 0281

SENTENCE

Count 1

3544

RECEIVED
Conspiracy - Trafficking,
Marihuana - § 44-53-3
(EX 1X d)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

CASE NUMBER 90 GS-18 4705001

THE DEFENDANT Charles Eugene Carpenter IS COMMITTED TO THE STATE
OR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 2.5

~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF \$ 50,000; PROVIDED UPON THE SERVICE
OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF \$ _____; PLUS

PAY/WAVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE

IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury \$ _____

For Property damage \$ _____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: consecutive to sentence of 90GS4705002

DATE: August 9, 1990

PRESIDING JUDGE

E. B. COTTINGHAM

COSTS AND ASSESSMENTS:

Ans Patterson
Assistant Clerk of Court, CHESTERFIELD COUNTY, S.C.
State Grand Jury

FILED

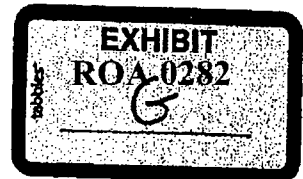
AUG 9 1990

Ozmint FILED BY Charles Carpenter 181783 & Bobby Horne 186786
4/24/2008 000000

ATTEST

TRUE COPY

ROA 0281



CHT1100D

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION

06/10/91

SCDC # 181783

CONVICTION SUMMARY

ROGGS

CARPENTER, CHARLES EUGENE

CURR LOC: ALLENDAL

OFFENDER TYPE: ADULT-STRAIGHT

OFFENDER CATEGORY: VIOLENT

			INCARC SENT	SENT	SENT		CONV				
		CONVICTION OFFENSE	YRS	MO	DYS	DATE	START	PROJ	COMP	STAT	CAT
1	*	500002 TRAFFICKING IN MARIJ	025	00	000	08/09/90	08/09/90	11/23/2016		ACTIV	V
2		500001 TRAFFICKING IN COCAI	025	00	000	06/04/90	06/04/90	10/04/2003		ACTIV	V

MAKE A SELECTION AND PRESS (ENTER)...

PAGE 00001

PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

ROA 0282

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER RECLASSIFICATION REPORT OF 05/21/93
PROGRAM STATUS REVIEW



PART II: NEEDS ASSESSMENT

INMATE #: 00181783
CARPENTER, CHARLES EUGENE

INST: KCI
CUSTODY/SEC: CL4

ASSGNMNT: 5000
AIMS GRP: ALPHA I

REASON FOR NEEDS ASSESSMENT REVIEW:

METHOD: INDIV. INTERVIEW

PROGRAM RECOMMENDATIONS
FROM LAST REVIEW:

PROGRAM PARTICIPATION
SINCE LAST REVIEW:

RECOMMENDED PROGRAMS
OR CHANGES:

199 SOCL WRK REFER/P

219 AIDS EDUCATION W
255 BUILDING PERSONA

199 SOCL WRK REFER/P
070 INSTITUTIONAL JO

RECEIVED

COURT ORDERED PROGRAMS: N ACTION TAKEN: 2 1993

Central Records Office

CURRENT EWC LEVEL: 00
JOB DESCRIPTION: PLUMMER

CURRENT PROJ MAXOUT DATE: 07/07/15
CURRENT PROJ PAROLE ELIG: 00/00/00

WORK EVALUATION:

RECOMMENDED WORK CHANGES:

INMATE WAS PROVIDED OPPORTUNITY TO PARTICIPATE IN MEANINGFUL PROGRAMS: Y
LIMITING PHYSICAL/PSYCHOLOGICAL FACTORS: N

EVALUATION OF JOB PERFORMANCE: GOOD
EVALUATION OF PROGRAM PERFORMANCE: GOOD

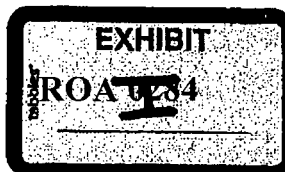
COMMITTEE/AREAS REPRESENTED

COMMENTS:

Continue the good work.

S. M. Roundtree
CHAIRPERSON: M ROUNDTREE

S. Charles Carpenter
INMATE: CHARLES CARPENTER



REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	: WHITE	FBI NUMBER-----	: 2B175BM1
SEX-----	: MALE	BIRTH DATE-----	: 05/26/53
HEIGHT-----	: 5 FT 6 IN	RELIGION-----	: BAPTIST-GENERAL
WEIGHT-----	: 170	U.S.CITIZEN-----	: CITIZEN - NATIVE BORN
EYE COLOR-----	: BROWN	MARITAL STATUS-----	: SINGLE
HAIR COLOR-----	: BROWN	MEDICAL STATUS-----	: NONE ON FILE
SKIN TONE-----	: FAIR	SOCIAL SECURITY #---	: 244885770
BODY BUILD-----	: MEDIUM	DRIVER LIC # & ST---	: NOT ON FILE
MARKS/SCARS---	: NONE ON FILE	AIMS GRP ASSIGNMENT:	: ALPHA I

***** DATA CURRENT AS OF: 05/26/93*****

CURR STATUS---	: INCARCERATED	TOTAL SENTENCE-----	: 50 YRS 0 MOS 0 DYS
CURR INST.---	: KCI	CURR SENT SERVING---	: 50 YRS 0 MOS 0 DYS
CURR CUST LVL-	: CL4	CURR SENT START---	: 06/04/90
CURR ASSIGN.---	: MAINTENANCE	EWC JOB LEVEL-----	: 02095
ESCAPE/ATTEMPT:	: SEE ESCAPE HISTORY	CURRENT LOCK-----	: B20055R
HLD/WNT-DETAIN:	: YES, SEE REPORT 2	SCDC ADMIT DTE-----	: 11/13/91
VICTIM/WITNESS:	: NONE ON FILE	PROJ EWC-MAX-OUT---	: 07/07/2015
PRIOR CONV OVER 90 DYS---	: 0	PROJ EWC PAR-ELIG---	: 00/00/2000
PRIOR CONV 90 DYS OR LESS:	: 0	WORK RELEASE ELIG---	: 07/07/2013

***** COMMITMENT INFORMATION *****

SEQ#	STATUS CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE IND	CONS IND	SUSP YRS	COMM CNTY
S00002	TRAFFICKING IN MARIJUANA	25 0 0	F 1	ST TIM V	Y		CHESTE
AC	NO PROBATION						
S00001	TRAFFICKING IN COCAINE	25 0 0	F 1	ST TIM V	N		CHESTE
AC	NO PROBATION						

ROA 0284

REPORT 1 CONTINUED SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO:181783

NAME:CARPENTER, CHARLES EUGENE

***** CONSECUTIVE STRUCTURE *****

CONVICTION
NUMBER

CONSECUTIVE TO:
NUMBER

S00002 IS CONS TO -->
S00001

S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92

TRN1220D

SCDC OFFENDER MANAGEMENT SYSTEM

05/26/93

INMATE TRANSFER AND COUNT

ROUNDMI

TRANSFER HISTORY

SCDC # 181783

CARPENTER, CHARLES EUGENE

CURR LOC: KIRKLAND

OFFENDER STATUS: ADULT-STRAIGHT

CURR ASSNMT: 5000

CURR DORM: B20055B

CURR CUST/SEC: CL4

MAINTENANCE

STATUS	LOCATION	CHG DATE	CHG REASON
- INCARCERATED	KIRKLAND	12/21/92	ADMINISTRATIVE
- INCARCERATED	EVANS	07/11/92	ADMINISTRATIVE
- INCARCERATED	ALLENDAL	12/04/91	ADMINISTRATIVE
- INCARCERATED	BRR&EC	11/14/91	NEW ADMISSION

SELECT A RECORD AND PRESS (ENTER)...

PAGE. > 0001

PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

01517000

OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM
INMATE INFRACTION HISTORY

ROA 0286 05/26/93
ROUND 0286

SCDC ID: 181783

CARPENTER, CHARLES EUGENE

CURR LOC: KIRKLAND

OFFENDER TYPE: ADULT-STRAIGHT

INFRACTION DESCRIPTION	INFRACTION DATE	HEARING DATE	ADM SEC	SUSP TO	NET GT LOST	DISPOSITION

END OF LIST

PAGE 0001

SELECT A RECORD AND PRESS <ENTER>...

PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD CLEAR-PREVIOUS SCREEN

ROA 0286

CMTI330D

 OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

ROA 02873

SCDC ID: 00181783

CARPENTER, CHARLES EUGENE

TOTAL SENTENCE ...: 050-00-000

CURRENT SENTENCE ..: 050-00-000

PROJECTED COMPLETION DATES

MAXOUT DATE: 07/07/2015

FULL TIME: 03/12/2038

GOOD TIME: 04/22/2020

INITIAL PAROLE DATE: 0/ 0/ 0 0

LOC: KIRKLAND

OFFENDER CATEGORY: VIOLENT

CONSECUTIVE SENTENCE ..: Y

CURRENT SENT START DATE: 06/04/1990

OFFENDER TYPE.....: ADULT-STRAIGHT SENTENCE

CURRENT EWC ..: 2 F 5

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

REST CTR COMPLETION DATE: 0/ 0/ 0 0

NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

TOTAL GT DAYS EARNED: 000700

TOTAL EARNED WORK CREDITS ...: 000102

TOTAL EDUCATION CREDITS: 000000

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 001072

WORK RELEASE ELIG DATE: 07/07/2013

SHORT TERM WK REL DATE: 01/07/2015

EPA DATE: 99/99/9999

SFII: 99/99/9999

SFII/EPA: 99/99/9999

SFI.....: 99/99/9999

PFKEYS: 5: HISTORY OF DATE CHANGES

ROA 0287

DE112100

OFFENDER MANAGEMENT SYSTEM
CAUTION/DETAINDER APPLICATION
DETAINDER SUMMARY

05/26/93
ROA 0288
ROUND 1

SCDC # 181783

CARPENTER, CHARLES EUGENE

OFFENDER TYPE: ADULT-STRAIGHT

CURR LOC: KCI
VIC/WIT :

DETAINDER	WARRANT	DATE	COUNTY	OFFENSE
- NOTIFY	NUMBER	ISSUED	COLUMBIA	
	90GS4705002	06/04/90		
	END OF LST			

ISSUING AGENCY
ATTNY GEN OFFI

PAGE: 0001

PLEASE SELECT RECORD AND PRESS (ENTER)...

PF11-QUIT PF10-MAIN MENU CLEAR-PREVIOUS SCREEN PF7-BACKWARD
PF4-MODETIN PF8-FORWARD

ROA 0288

EDUI200D

OFFENDER MANAGEMENT SYSTEM
EDUCATIONAL SERVICES
TEST HISTORY

ROA 0289
05/26/93
ROUND 1

SCDC# 181783

CARPENTER, CHARLES EUGENE

OFFENDER TYPE: ADULT-STRAIGHT

CURR LOC: KIRKLAND

DOB: 05/26/53 RACE: b

OFFENDER CATEGORY: VIOLENT

TEST DATE	TYPE	LEVEL	READING	MATH	LANG
11/18/91	WRAT		10.3	07.3	

ENROLLMENT INDICATOR

TEST SCORE HISTORY DISPLAYED...

PAGE 0001

PFKEY 3:ADD 4:MOD ENTER:INQ

ROA 0289

EDU1100D

 OFFENDER MANAGEMENT SYSTEM
EDUCATIONAL SERVICES
ENROLLMENT SUMMARY

ROA 0290 05/26/93
ROUNDH1

SCDC# > 181783

CARPENTER, CHARLES EUGENE

OFFENDER TYPE: ADULT-STRAIGHT
PROGRAM NAME

CURR LOC: KIRKLAND

DOB: 05/26/53 RACE: W

OFFENDER CATEGORY: VIOLENT
TERM REASON

ENROLLED TERM DTE

PAGE> 0001

ENROLLMENT SUMMARY DISPLAYED...

PFKEY 3:ADD 4:MOD ENTER:INQ

ROA 0290



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

REPORT 1

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	WHITE	FI1 NUMBER-----	281758M1
SEX-----	MALE	BIRTH DATE-----	05/26/53
HEIGHT-----	5 FT 6 IN	RELIGION-----	BAPTIST
WEIGHT-----	170	U.S.CITIZEN-----	CITIZEN - NATIVE BORN
EYE COLOR-----	BROWN	MARITAL STATUS-----	SINGLE
HAIR COLOR-----	BROWN	MEDICAL STATUS-----	NONE ON FILE
SKIN TONE-----	FAIR	SOCIAL SECURITY #--	244885770
BODY BUILD-----	MEDIUM	DRIVER LIC # & ST--	NOT ON FILE
MARKS/SCARS---	NONE ON FILE	AIMS GRP ASSIGNMENT	ALPHA I

***** DATA CURRENT AS OF: 01/20/95*****

CURR STATUS---	INCARCERATED	TOTAL SENTENCE-----	50 YRS 0 MOS 0 DYS
CURR INST.---	EVANS	CURR SENT SERVING--	50 YRS 0 MOS 0 DYS
CURR CUST LVL--	BL3	CURR SENT START---	06/04/90
CURR ASSIGN.---	RECREATION DEPT	EWC JOB LEVEL-----	05240
ESCAPE/ATTEMPT:	SEE ESCAPE HISTORY	CURRENT LOCK-----	2A0182A
HLD/WNT-DETAIN:	YES, SEE REPORT 2	SCDC ADMIT DTE-----	11/13/91
VICTIM/WITNESS:	NONE ON FILE	PROJ EWC-MAX-OUT---	04/07/2017
PRIOR CONV OVER 90 DYS---	0	PROJ EWC PAR-ELIG--	00/00/0000
PRIOR CONV 90 DYS OR LESS:	0	WORK RELEASE ELIG--	02/06/2015

***** COMMITMENT INFORMATION *****

SEQ#	STATUS CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE	IND	CONS IND	SUSP YRS	COMM CNTY
S00002	TRAFFICKING IN MARIJUANA	25 0 0	F 1	ST TIM V	Y			CHESTE
AC	NO PROBATION							
S00001	TRAFFICKING IN COCAINE	25 0 0	F 1	ST TIM V	N			CHESTE
AC	NO PROBATION							

ROA 0291

ROA 0292

REPORT 1 CONTINUED SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBER

CONSECUTIVE TO:
NUMBER

S00002 IS CONS TO -->
S00001

S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR
CHESTERFIELD CO. RR 06/19/92

JAIL TIME

ROA 0292

SCDC OFFENDER MANAGEMENT SYSTEM
SEPARATION REQUIREMENT \ CAUTION NOTICE

SUMMARY

CARPENTER, CHARLES 181783 TURBEVILLE DATE: 06/30/95

THE ABOVE NAMED INMATE IS NOT TO BE ASSIGNED TO THE SAME
INSTITUTION/CENTER AS THE FOLLOWING:

NAME	SCDC #	INST	DATE ISSUED	INFO OBTAINED
CROWLEY, JOSEPH	111357	CROSS ANCH. 9/11/95		
TAYLOR, KENNETH	168407	TURBEVILLE	6/7/95	FRANCES STROKER
		PERRY	9/25/90	SEAN KITTRELL

* * NOTE * *

PRIOR TO TRANSFERRING ANY OF THE ABOVE INMATES A CHECK OF THE
SEPARATION REQUIREMENT \ CAUTION NOTICE SCREEN AND THE INMATE'S
PRESENT FACILITY LOCATION SHOULD BE CHECKED.SHOULD ADDITIONAL INFORMATION BE NEEDED BEFORE TRANSFERRING
ANY OF THE ABOVE INMATES, PLEASE CALL THE DIVISION OF INMATE
OPERATION AND CONTROL.

DISTRIBUTION:

DIIC FILE
OFFENDER RECORDS (EACH INMATE)
INSTITUTION RECORDS (EACH INMATE)

FILED

* * THIS PAGE IS ALWAYS TO BE FILED ON TOP IN RECORD * *

SCDC OFFENDER MANAGEMENT SYSTEM
SEPARATION REQUIREMENT \ CAUTION NOTICE

SUMMARY

CARPENTER, CHARLES 181783 TURBEVILLE DATE: 06/30/95

THE ABOVE NAMED INMATE IS NOT TO BE ASSIGNED TO THE SAME
INSTITUTION/CENTER AS THE FOLLOWING:

NAME	SCDC #	INST	DATE ISSUED	INFO OBTAINED
CROWLEY, JOSEPH	111357	TURBEVILLE	6/ 7/95	FRANCES STROKER
TAYLOR, KENNETH	168407	PERRY	9/25/90	SEAN KITTRELL

* * NOTE * *

PRIOR TO TRANSFERRING ANY OF THE ABOVE INMATES A CHECK OF THE
SEPARATION REQUIREMENT \ CAUTION NOTICE SCREEN AND THE INMATE'S
PRESENT FACILITY LOCATION SHOULD BE CHECKED.

SHOULD ADDITIONAL INFORMATION BE NEEDED BEFORE TRANSFERRING
ANY OF THE ABOVE INMATES, PLEASE CALL THE DIVISION OF INMATE
OPERATION AND CONTROL.

DISTRIBUTION:
DIOC FILE
OFFENDER RECORDS (EACH INMATE)
INSTITUTION RECORDS (EACH INMATE)

FILED

* * THIS PAGE IS ALWAYS TO BE FILED ON TOP IN RECORD * *

CAUTION

Separated Requirement

1. Ident: Charles CARPENTER Eugene 181783

KCT

2. Ident: TAYLOR Kenneth RA-1 168407

EET. Cross Anchor ⁺²¹¹⁶³ Perry 125 E 5-11-95

Re printed Delid 2 July 93

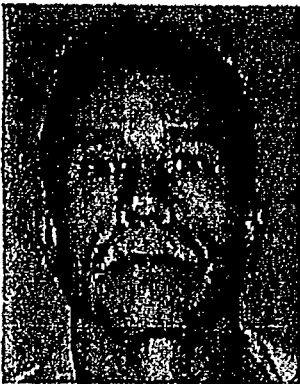
Inmate Search

Name: CARPENTER, CHARLES EUGENE
 SCDC ID: 00181783 LOC: 0531 Se Ra: M
 First Name: [] Commitment
 Last Name: [] Alias/Logo/Moldon
 SCDC ID: 181783 SID: Birth YR:
 SSN: Sex: [] Race: []
☐ Phonetic Match ☒ Incarcerated Location:
☐ Released
☐ Archived Records

Advanced Search

Submit

Reset

Identification	Personal	Case History	Movement	Escapes	Credits	Programs	Transfer Request
IDENTIFICATION	Aliases	Previous SCDC IDs					
	SCDC Name	CARPENTER, CHARLES EUGENE	Legal Name				
	SCDC ID	00181783	SID	SC00098814			
	SSN	244-88-5770	FBI#	281758M1			
	DOB	05/26/1953	Citizenship	CITIZEN - NATIVE I			
	Height	5' 6"	Weight	175 lbs.			
	Race	WHITE	Ethnicity	NOT HISPANIC			
	Build	MEDIUM	Complexion	FAIR			
	Hair Color	BROWN	Eye Color	BROWN			
	Location	EVANS	Status	INCARCERATED			
	Security	LEVEL 2	Custody	MINIMUM IN			
	Religion	BAPTIST	Occupation	AUTO MECHANIC			
	Dorm/Room/Bunk	2A-0283-A	Picture Date	12/09/2008			



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[Version: 2.2.0 Built: 03/15/2010 04:22:15 PM Time: 00:33:27 AM]

Filed - 13
 6/28/11

<https://sword.doc.state.sc.us/scdc-internal/>

ROA 0296

Ballard FOIA w/ Release for Charles Eugene Carpenter 181783 October 11, 2016 GC465



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

REPORT 1

INMATE NO:181783

NAME:CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	WHITE	FBI NUMBER-----	281758M1
SEX-----	MALE	BIRTH DATE-----	05/26/53
HEIGHT-----	5 FT 6 IN	RELIGION-----	BAPTIST
WEIGHT-----	170	U.S.CITIZEN-----	CITIZEN - NATIVE BORN
EYE COLOR-----	BROWN	MARITAL STATUS-----	SINGLE
HAIR COLOR-----	BROWN	MEDICAL STATUS-----	NONE ON FILE
SKIN TONE-----	FAIR	SOCIAL SECURITY #--	244885770
BODY BUILD-----	MEDIUM	DRIVER LIC # & ST--	NOT ON FILE
MARKS/SCARS---	NONE ON FILE	AIMS GRP ASSIGNMENT	ALPHA I

***** DATA CURRENT AS OF: 03/30/95*****

CURR STATUS---	INCARCERATED	TOTAL SENTENCE-----	50 YRS 0 MOS 0 DYS
CURR INST.---	TURBEVILLE	CURR SENT SERVING--	50 YRS 0 MOS 0 DYS
CURR CUST LVL--	BL3	CURR SENT START---	06/04/90
CURR ASSGN.---	NOT ON FILE	EWC JOB LEVEL-----	NO CURRENT JOB
ESCAPE/ATTEMPT	SEE ESCAPE HISTORY	CURRENT LOCK-----	EB0153AB
HLD/WNT-DETAIN	YES, SEE REPORT 2	SCDC ADMIT DTE-----	11/13/91
VICTIM/WITNESS	NONE ON FILE	PROJ EWC-MAX-OUT---	12/04/2019
PRIOR CONV OVER 90 DYS---	0	PROJ EWC PAR-ELIG--	00/00/0000
PRIOR CONV 90 DYS OR LESS	0	WORK RELEASE ELIG--	07/04/2017

***** COMMITMENT INFORMATION *****

SEQ#	STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE	CONS IND	SUSP YRS	COMM CNTY
S00002	AC	TRAFFICKING IN MARIJUANA NO PROBATION	25 0 0	F 1	ST TIM V	Y		CHESTE
S00001	AC	TRAFFICKING IN COCAINE NO PROBATION	25 0 0	F 1	ST TIM V	N		CHESTE

ROA 0297

ROA 0298

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

REPORT 1 CONTINUED

INMATE NO:181783

NAME:CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBER

CONSECUTIVE TO:
NUMBER

S00002 IS CONS TO. -->
S00001

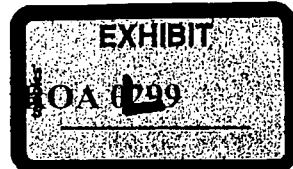
S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR
CHESTERFIELD CO. RR 06/19/92

JAIL TIME

ROA 0298



RNEP590D
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	WHITE	FBI NUMBER-----	201750M1
SEX-----	MALE	BIRTH DATE-----	05/26/53
HEIGHT-----	5 FT 6 IN	RELIGION-----	BAPTIST
WEIGHT-----	170	U.S. CITIZEN-----	CITIZEN - NATIVE BORN
EYE COLOR-----	BROWN	MARITAL STATUS-----	SINGLE
HAIR COLOR-----	BROWN	MEDICAL STATUS-----	NONE ON FILE
SKIN TONE-----	FAIR	SOCIAL SECURITY #---	244905770
BODY BUILD-----	MEDIUM	AIMS GRP ASSIGNMENT	ALPHA I
MARKS/SCARS----	NONE ON FILE		

***** DATA CURRENT AS OF: 06/22/99 *****

CURR STATUS---	INCARCERATED	TOTAL SENTENCE-----	50 YRS 0 MOS 0 DYS
CURR INST.-----	EVANS	CURP SENT SERVING---	50 YRS 0 MOS 0 DYS
CURR CUST LVL---	M13	CURR SENT START----	06/04/90
CURR ASSIGN.---	HORTICULTURE DETAIL	EMC JOB LEVEL-----	NO CURRENT JOB
ESCAPE/ATTEMPT:	SEE ESCAPE HISTORY	CURRENT LOCK-----	2A0163A
HLD/WNT-DETAIN YES,	SEE REPORT 2	SCDC ADMIT DTE-----	11/13/91
VICTIM/WITNESS:	NONE ON FILE	PROJ EMC-MAX-OUT---	07/04/2019
PRIOR CONV OVER 90 DYS----	4	PROJ EMC PAR-ELIG---	00/00/0000
PRIOR CONV 90 DYS OR LESS	2	LABOR CREW/WORK PGM	99/99/9999

***** COMMITMENT INFORMATION *****

SEQ#	STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL	COMS	SUSP	COMM
					TYPE	IND	IND	YRS CNTY
300002		TRAFFICKING IN MARIJUANA	25 0 0	F 1	ST TIM V	Y		CHESTERF
VC		NO PROBATION						
300001		TRAFFICKING IN COCAINE	25 0 0	F 1	ST TIM V	N		CHESTERF
VC		NO PROBATION						

ROA 0299

ROA 0300

REPORT 1 CONTINUED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBER

CONSECUTIVE TO
NUMBER

500002 IS CONS TO -->
500001

500001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME,
CHESTERFIELD CO. PR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY COED. AND ENTERED SEVERAL CONVICTION AND COMMITM
ENT TO PRIORS....MCELROY///

ROA 0300

INP590D
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY



INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	WHITE	FBI NUMBER-----	281758M1
SEX-----	MALE	BIRTH DATE-----	05/26/53
HEIGHT-----	5 FT 6 IN	RELIGION-----	BAPTIST
WEIGHT-----	170	U.S. CITIZEN-----	CITIZEN - NATIVE BORN
EYE COLOR-----	BROWN	MARITAL STATUS-----	SINGLE
HAIR COLOR-----	BROWN	MEDICAL STATUS-----	NONE ON FILE
SKIN TONE-----	FAIR	SOCIAL SECURITY #--	244885770
BODY BUILD-----	MEDIUM	AIMS GRP ASSIGNMENT	ALPHA I
MARKS/SCARS---	NONE ON FILE		

***** DATA CURRENT AS OF: 03/28/02 *****

CURR STATUS---	INCARCERATED	TOTAL SENTENCE-----	50 YRS 0 MOS 0 DYS
CURR INST.----	EVANS	CURR SENT SERVING---	50 YRS 0 MOS 0 DYS
CURR CUST LVL--	M13	CURR SENT START----	04/07/90
CURR ASSIGN.---	HORTICULTURE DETAIL	EWC JOB LEVEL-----	07045
ESCAPE/ATTEMPT	SEE ESCAPE HISTORY	CURRENT LOCK-----	3A0187B
OLD/WNT-DETAIN	YES, SEE REPORT 2	SCDC ADMIT DTE-----	11/13/91
VICTIM/WITNESS	NONE ON FILE	PROJ EWC-MAX-OUT---	11/07/2016
PRIOR CONV OVER 90 DYS---	4	PROJ EWC PAR-ELIG---	11/07/2016
PRIOR CONV 90 DYS OR LESS:	2	LABOR CREW/WORK PGM	99/99/9999

***** COMMITMENT INFORMATION *****

SEQ#	STATUS CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE	CONS IND	SUSP YRS	COMM CNTY
300002	TRAFFICKING IN MARIJUANA	25 0 0	F 1	ST TIM V	Y		CHESTERF
4C	NO PROBATION						
300001	TRAFFICKING IN COCAINE	25 0 0	F 1	ST TIM V	N		CHESTERF
4C	NO PROBATION						

ROA 0301

ROA 0302

REPORT 1 CONTINUED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBER

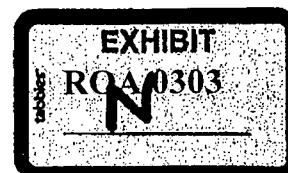
CONSECUTIVE TO:
NUMBER

500002 IS CONS TO -->
500001

500001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY COED, AND ENTERED SEVERAL CONVICTION AND COMMITM
ENT TO PRIORS....MCELROY/////////57 DAYS JAIL CREDIT GIVEN TO #1 WHICH IS THE DATE
OF CONVICTION. JHANNA 03/22/02/////////



ADMP410D
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----	WHITE	FBI NUMBER-----	281758M1
SEX-----	MALE	BIRTH DATE-----	05/26/53
HEIGHT-----	5 FT 6 IN	RELIGION-----	BAPTIST
WEIGHT-----	154	U.S. CITIZEN-----	CITIZEN - NATIVE BORN
EYE COLOR-----	BROWN	MARITAL STATUS-----	SINGLE
HAIR COLOR-----	BROWN	MEDICAL STATUS-----	NONE ON FILE
SKIN TONE-----	FAIR	SOCIAL SECURITY #-----	1244885770
BOUY BUILD-----	MEDIUM	DRIVER LIC # & ST-----	NOT ON FILE
MARKS/SCARS-----	NONE ON FILE	AIMS GRP ASSIGNMENT	ALPHA I

***** DATA CURRENT AS OF: 05/16/05 *****

CURR STATUS---	INCARCERATED	TOTAL SENTENCE-----	50 YRS 0 MOS 0 DYS
CURR INST-----	KERSHAW	CURR SENT SERVING---	50 YRS 0 MOS 0 DYS
CURR CUST LVL---	M12	CURR SENT START-----	04/07/90
CURR ASSIGN---	BLDG DETAIL	EWC JOB LEVEL-----	03355
ESCAPE/ATTEMPT---	SEE ESCAPE HISTORY	CURRENT LOCK-----	HC0210T
HLD/WNT-DETAIN---	YES, SEE REPORT 2	SCDC ADMIT DTE-----	11/13/91
VICTIM/WITNESS---	NONE ON FILE	PROJ EWC-MAX-OUT---	11/07/2016
PRIOR CONV OVER 90 DYS---	4	PROJ EWC PAR-ELIG---	100/00/0000
PRIOR CONV 90 DYS OR LESS---	2	LABOR CREW/WORK PGM---	99/99/9999

***** COMMITMENT INFORMATION *****

SEQ#	STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE	CONS IND	SUSP IND	COMM YRS	COMM CNTY
600002	AC	TRAFFICKING IN MARIJUANA NO PROBATION	25 0 0	F 1	ST TIM V	Y			CHFLD
600001	AC	TRAFFICKING IN COCAINE NO PROBATION	25 0 0	F 1	ST TIM V	N			CHFLD

ROA 0303

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REPORT 1 CONTINUED OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** CONSECUTIVE STRUCTURE *****

CONVICTION
NUMBERCONSECUTIVE TO:
NUMBERS00002 1S CONS TO -->
S00001

S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY CODED, AND ENTERED SEVERAL CONVICTION AND COMMITM
ENT TO PRIORS...MCELROY/////////57 DAYS JAIL CREDIT GIVEN TO #1 WHICH IS THE DATE
OF CONVICTION. JHANNA 03/22/02/////////

RNEP590D
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY



INMATE NO: 000181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----:WHITE
SEX-----:MALE
HEIGHT-----:5 FT 6 IN
WEIGHT-----:161
EYE COLOR-----:BROWN
HAIR COLOR-----:BROWN
SKIN TONE-----:FAIR
BODY BUILD-----:MEDIUM
MARKS/SCARS-----:NONE ON FILE

FBI NUMBER-----:281758M1
BIRTH DATE-----:05/26/53
RELIGION-----:BAPTIST
U.S.CITIZEN-----:CITIZEN - NATIVE BORN
MARITAL STATUS-----:SINGLE
MEDICAL STATUS-----:NONE ON FILE
SOCIAL SECURITY #---:244885770
AIMS GRP ASSIGNMENT:ALPHA I

***** DATA CURRENT AS OF: 01/17/08 *****

CURR STATUS---:INCARCERATED
CURR INST.---:EVANS
CURR CUST LVL---:MI2
CURR ASSIGN.---:BUILDING #1
ESCAPE/ATTEMPT:SEE ESCAPE HISTORY
HLD/WNT-DETAIN:YES, SEE REPORT 2
VICTIM/WITNESS:NONE ON FILE
PRIOR CONV OVER 90 DYS---: 4
PRIOR CONV 90 DYS OR LESS: 2

TOTAL SENTENCE-----: 50 YRS 0 MOS 0 DYS
CURR SENT SERVING---: 50 YRS 0 MOS 0 DYS
CURR SENT START---:04/07/90
EWC JOB LEVEL-----:NO CURRENT JOB
CURRENT LOCK-----:F5A0162B
SCDC ADMIT DTE-----:11/13/91
PROJ EWC-MAX-OUT---:02/07/2018

PROJ EWC PAR-ELIG---:00/00/0000
LABOR CREW/WORK PGM:99/99/9999

***** COMMITMENT INFORMATION *****

SEQ#	STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE	CONS IND	SUSP IND	COMM YRS
300002	TRAFFICKING IN MARIJUANA		25 0 0	F 1	ST TIM V	Y		CHESTERF
300001	TRAFFICKING IN COCAINE		25 0 0	F 1	ST TIM V	N		CHESTERF

ROA 0305

ROA 0306

REPORT 1 CONTINUED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 000181783

NAME: CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBER

CONSECUTIVE TO:
NUMBER

S00002 IS CONS TO -->
S00001

S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE 41 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY COED, AND ENTERED SEVERAL CONVICTION AND COMMITM
ENT TO PRIORS...MCELROY/////////57 DAYS JAIL CREDIT GIVEN TO 41 WHICH IS THE DATE
OF CONVICTION.JHANNA 03/22/02/////////

ROA 0306



RNEP590D
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

RACE-----:WHITE
SEX-----:MALE
HEIGHT-----:5 FT 6 IN
WEIGHT-----:175
EYE COLOR-----:BROWN
HAIR COLOR-----:BROWN
SKIN TONE-----:FAIR
BODY BUILD-----:MEDIUM
MARKS/SCARS---:NONE ON FILE

FBI NUMBER-----:281758M1
BIRTH DATE-----:05/26/53
RELIGION-----:BAPTIST
U.S.CITIZEN-----:CITIZEN - NATIVE BORN
MARITAL STATUS-----:SINGLE
MEDICAL STATUS-----:NONE ON FILE
SOCIAL SECURITY #--:244885770
AIMS GRP ASSIGNMENT:ALPHA I

***** DATA CURRENT AS OF: 06/28/10 *****

CURR STATUS---:INCARCERATED
CURR INST.----:EVANS
CURR CUST LVL-:MI2

CURR ASSIGN.---:BUILDING DETAIL BLDG
ESCAPE/ATTEMPT:SEE ESCAPE HISTORY
HLD/WNT-DETAIN:YES, SEE REPORT 2

VICTIM/WITNESS:NONE ON FILE
PRIOR CONV OVER 90 DYS---: 4
PRIOR CONV 90 DYS OR LESS: 2

TOTAL SENTENCE-----: 50 YRS 0 MOS 0 DYS
CURR SENT SERVING---: 50 YRS 0 MOS 0 DYS
CURR SENT START-----:04/07/90
EWC JOB LEVEL-----:07015
CURRENT LOCK-----: 2A0283A
SCDC ADMIT DTE-----:11/13/91
PROJ EWC-MAX-OUT---:05/20/2016

PROJ EWC PAR-ELIG---:00/00/0000
LABOR CREW/WORK PGM:99/99/9999

***** COMMITMENT INFORMATION *****

SEQ#	STATUS CURRENT OFFENSE	INCARC SENTENCE YRS MO DYS	CHAR CNTS	SENT VIOL TYPE IND	CONS IND	SUSP YRS	COMM CNTY
S00002	TRAFFICKING IN MARIJUANA	25 0 0	F 1	ST TIM V	Y		CHESTERF
AC	NO PROBATION						
S00001	TRAFFICKING IN COCAINE	25 0 0	F 1	ST TIM V	N		CHESTERF
AC	NO PROBATION						

Filed 1/21
6/28/10

ROA 0307

REPORT 1 CONTINUED
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

CONSECUTIVE STRUCTURE

CONVICTION
NUMBERCONSECUTIVE TO:
NUMBERS00002 IS CONS TO -->
S00001

S00001

** COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY COED, AND ENTERED SEVERAL CONVICTION AND COMMITM
ENT TO PRIORS....MCELROY////////57 DAYS JAIL CREDIT GIVEN TO #1 WHICH IS THE DATE
OF CONVICTION.JHANNA 03/22/02////////

ESIDENT STABILITY CODE TO CONFORM WITH OP-21.04 CHANGE IN CRITERIA.. MODIFIED R
.BRENNAN/// 1/13/10..J



NEP590D
PORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

JUL 06 2011

MATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

***** PERSONAL/IDENTIFICATION DATA *****

ACE-----:WHITE	FBI NUMBER-----:281758M1
EX-----:MALE	BIRTH DATE-----:05/26/53
EIGHT-----:5 FT 6 IN	RELIGION-----:BAPTIST
EIGHT-----:166	U.S.CITIZEN-----:CITIZEN - NATIVE BORN
YE COLOR-----:BROWN	MARITAL STATUS-----:SINGLE
AIR COLOR-----:BROWN	MEDICAL STATUS-----:NONE ON FILE
IN TONE-----:FAIR	SOCIAL SECURITY #---:244885770
JOY BUILD-----:MEDIUM	AIMS GRP ASSIGNMENT:ALPHA I
ARKS/SCARS---:NONE ON FILE	

***** DATA CURRENT AS OF: 06/24/11 *****

JRR STATUS---:INCARCERATED	TOTAL SENTENCE-----: 50 YRS 0 MOS 0 DYS
JRR INST.----:EVANS	CURR SENT SERVING---: 50 YRS 0 MOS 0 DYS
JRR CUST LVL--:M12	CURR SENT START-----:04/07/90
JRR ASSIGN.---:BUILDING DETAIL BLDG	EWC JOB LEVEL-----:07015
SCAPE/ATTEMPT:SEE ESCAPE HISTORY	CURRENT LOCK-----: 2A0283A
LD/WNT-DETAIN:YES, SEE REPORT 2	SCDC ADMIT DTE-----:11/13/91
ICTIM/WITNESS:NONE ON FILE	PROJ EWC-MAX-OUT---:04/07/2040
RIOR CONV OVER 90 DYS---: 4	PROJ EWC PAR-ELIG---:00/00/0000
RIOR CONV 90 DYS OR LESS: 2	LABOR CREW/WORK PGM:99/99/9999

***** COMMITMENT INFORMATION *****

EQ#	INCARC	SENT VIOL	CONS	SUSP	COMM					
TATUS CURRENT OFFENSE	SENTENCE	CHAR	CNTS	TYPE	IND	IND	YRS	CNTY		
	YRS	MO	DYS							
00002 TRAFFICKING IN MARIJUANA	25	0	0	C	1	ST	TIM	V	Y	CHESTERF
C NO PROBATION										
00001 TRAFFICKING IN COCAINE	25	0	0	C	1	ST	TIM	V	N	CHESTERF
C NO PROBATION										

Handwritten: Pined 7-6-11 BS

ROA 0309

REPORT 1 CONTINUED SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 181783

NAME: CARPENTER, CHARLES EUGENE

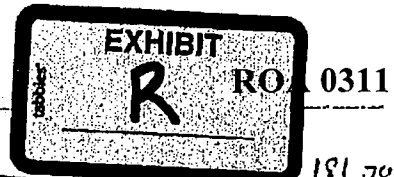
***** CONSECUTIVE STRUCTURE *****

CONVICTION
NUMBERCONSECUTIVE TO:
NUMBER00002 IS CONS TO -->
00001

S00001

* COMMITMENT TEXT **

SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
HESTERFIELD CO. RR 06/19/92///RECORD AUDITED 12-04-96, ENTERED OFFENSE DATES ON
COMMITMENTS, ENTERED STABILITY CODE, AND ENTERED SEVERAL CONVICTION AND COMMIT-
MENT TO PRIORS....MCELROY/////////57 DAYS JAIL CREDIT GIVEN TO #1 WHICH IS THE DATE
OF CONVICTION. JHANNA 03/22/02/////////MODIFIED RESIDENT STABILITY CODE TO CON-
FORM WITH OP-21.04 CHANGE IN CRITERIA..1/13/10...J.DRENNAN/// PER C. ROLACK,
MODIFIED JURIS DATE ON OFFENSE #2(CONSECUTIVE SENTENCE)...TO REFLECT 57 DAYS
TC...6/23/11...KFOGLE.../////////ENTERED STATUTE AND CORRECTED CHARACTER CODE ON
OFFENSE #'S 1-2. INMATE'S SENTENCE CORRECTED TO SHOW 25YRS MANDATORY MINIMUM
DAY-FOR-DAY SENTENCE PER STATUTE, S. WILLIS 06/24/11.....



TITLE	STAFF CLASSIFICATION	DATE	181 70
Mo Doris Poole	S.C. D.C	F2 A-283	KF
INMATE	CHARLES CARPENTER	SLOC#	181783
IN	EVANS CI	LV	Sept-12-11

Ms Poole

I need your help (real bad.) I don't know why or how my max out date got change from 2016 to 2040. I'm sentence under a (MANDATORY MINIMUM) I was indicted under the 4453-420 and some how they got me under the 4453-370^{now} plus I can't get my Federal time which the judge ran my state time CONCURRENT with Federal time (Enclose is judge order.)

Please let me know what going on, my health went to good, this is really stress me out in Bad way. — plus I've got 50 years, and I think I'm right on this, I get 180^{days} off each year, that (25 years 300 days) I get a 2.5 work credit, that should make my MAX out date around 2014.

I'm open court, plus my lawyer, judge and att Gen. said I get Parole on my second 25 years sentence, enclosed is what was said in open court which I had a copy of the 2) two twenty five Mantory, which now (NO ONE) can produce NOTHING on (2) two twenty five Mantory, only one 25 mantory, I should have been release 6 or 7 years ago. Please let me know. enclosed is (4) four copy from my transcript, when you answer I inmate request, please if you can send them back to me.

— (BACK TO ASSIGNS) THANK YOU, Charles Carpenter #181783

STAFF

Mr. Carpenter,

RECEIVED

SEP 15 2011
DISPATCH
CLASSIFICATION
INMATE RECORDS
Your sentence was modified to show as: 25 yr Mandatory Minimum day for day sentence on 6/24/11.

Kali Fee 12/2/11

EXHIBIT

ROA 0312

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request for Jail Time

Inmate Charles Carpenter AKA _____ SCDC # 181783
 Soc. Sec. # 5770 DOB 5-26-53 Race W Sex M

The inmate listed above indicates that he/she was held in your facility as a pre-trial detainee for:
TRAFFICKING IN MARIJUANA & TRAFFICKING IN COCAINE
 (Offenses)

He/She was committed to the Department of Corrections on November 27, 1989
 If he/she has served time in your facility, would you please fill in the information requested below.

Completed by: B. Hyatt EVANS 6-6-11
 (Caseworker) (Institution) (Date)

(☒) Approved: Rashie Ford 6/23/11
 Chief, Offender Records Date

(☐) Disapproved: _____
 Reason for Disapproval Date

Inmate: _____ was in the custody
 (Inmate's Name)

of this agency at the following time(s) for the following offense(s):

OFFENSE	WARRANT NO.	DATE OF ARREST	DATE OF RELEASE	REASON FOR RELEASE
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Multiple times date
to 6/13/90 up to SI
67 days etc on off

City or County _____ Date _____

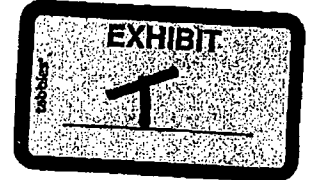
PLEASE RETURN TO: Offender Records, 4444 Broad River Road, Columbia, SC 29210

WHITE: Caseworker
 CANARY: Offender Records
 PINK: Suspense

SCDC 18-11 (Revised September, 1999)

ROA 0313
181783

**DIVISION OF CLASSIFICATION AND INMATE RECORDS
INMATE CORRESPONDENCE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**



INMATE: Charles Carpenter, SCDC # 181783

INSTITUTION: Evans Correctional Institution

FROM: Jannita C. Gaston, Division Director
Classification and Women's Facilities

SUBJECT: Response to Inmate Correspondence

DATE: December 21, 2012

I am in receipt of your letter, forwarded to this office for response, concerning your sentencing.

In an effort to ensure that we have used the correct sentencing guidelines that were in place at the time of your crime, the Inmate Records Office contacted the Office of General Counsel, to review the statutes that you were sentenced under in 1990. Per that office, the following is the language of those sections as it stood on April 7, 1990:

Section 44-53-370(e)(2)(e): (d) ten thousand pounds or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

For the purpose of these guidelines, mandatory minimums must be served day-for-day without any credit towards the sentence.

Attached you will find a portion of your transcript where the Solicitor, Mr. Kittrell, asked if the "defendant", meaning you, understood that the sentence was a mandatory term of imprisonment, that it is a mandatory minimum and it had no eligibility until the passage of 25 years. Your attorney, Mr. Lofton, stated that you understood the ramifications of the sentencing. Also, your sentences would have been concurrent had you cooperated fully with investigators prior to sentencing. Due to lack of cooperation, the judge ran your sentences consecutive to each other meaning that you had a total of 50 years that had to be served day-for-day.

An audit was conducted in 2011 of active SCDC inmates with Drug Trafficking offenses of 25 years or more by Ms. Willis, Inmate Records Office to ensure programming was correct for the sentences. I advise you to go to the law library at your institution to conduct your own research into your sentences and the law that was in place at that time.

I trust this has addressed your concerns.

S/ 
Jannita C. Gaston

JCG: dgg
Attachment

cc: Inmate Record ✓
Institutional File
File

ROA 0313

Evans
ROA 0314

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

DIVISION OF CLASSIFICATION AND WOMEN'S FACILITIES

RESPONSE TO INMATE CORRESPONDENCE



INMATE: Charles Carpenter SCDC # 181783

INSTITUTION: Kirkland Correctional Institution-MSU

FROM: Jannita C. Gaston
Division Director
Classification and Women's Facilities

SUBJECT: Response to Inmate Correspondence

DATE: January 16, 2013

Thank you for your letter, received in this office January 11, 2013. It appears that you still have some concerns in reference to your sentence and statutes mentioned in my previous response. After reviewing the response, I did notice that some information as it relates to your statutes was inadvertently left out. The following are the statutes that you were sentenced under and what was in effect at the time of your indictment:

Section 44-53-370(e)(1)(d) and Section 44-53-370(e)(2)(e)

"(e) Any person who knowingly sells, manufactures, delivers, or brings into this State, or who provides financial assistance or otherwise aids, abets, or conspires to sell, manufacture, deliver, or bring into this State, or who is knowingly in actual or constructive possession of:

(1) ten pounds or more of marijuana is guilty of a felony which is known as "trafficking in marijuana" and, upon conviction, must be punished as follows if the quantity involved is:

(d) ten thousand pounds or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4) is guilty of a felony which is known as 'trafficking in cocaine' and, upon conviction, must be punished as follows if the quantity involved is:

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

The statutes were enacted by the South Carolina General Assembly, 107th Session, 1987-1988. The Act Number is 565, Section 1, in case you would like to research it through the Law Library.

ROA 0314

You are also contending that you were sentenced under a conspiracy statute and not under the drug statute for your offenses. Unless you have sentencing sheets to prove that the statutes you were sentenced under were not 44-53-0370(e)(1)(d) and 44-53-0370(e)(2)(e), these statutes will continue to serve as the official statutes of record. Be mindful that "conspiring to commit" the crimes listed in these statutes is a part of the statute and is considered the principal of the offense. You previously raised this issue through an appeal, as documented in your record, and the court denied your claim.

As for the terminology as it relates to mandatory minimum sentences, you are correct that the statute does not state "day-for-day" sentences. However, based on the language of the statute, it is inferred that the legislature did not intend for any credits to be earned on these type sentences, thus rendering mandatory minimum sentences as sentences that must be served day-for-day. Below is the language of the statute as it was in effect at the time of your indictment:

(5) Any person convicted and sentenced under Section 44-53-370(e) to a mandatory minimum term of imprisonment of twenty-five years or a mandatory term of twenty-five years or more is not eligible for parole, extended work release, as provided for in Section 24-13-610, or supervised furlough, as provided for in Section 24-13-710. Notwithstanding Section 44-53-420, any person convicted of conspiracy pursuant to Section 44-53-370(e) must be sentenced as provided herein with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.

I trust this has addressed your concerns.

S/ 
Jannita C. Gaston

JCG: dgg

cc: Inmate Records
Institutional File
File

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

(Our File No.: 5021.01216)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06216

MOTION TO DISMISS

ROA 0316

RICHLAND COUNTY
FILED
2016 DEC 28 AM 11:01
JEANNETTE W. MCBRIDE
C.C.P. & S.S.

YOU WILL PLEASE TAKE NOTICE that Defendant, by and through its undersigned counsel, do hereby move pursuant to Rules 12(b)(1),(3),(6), and (9), South Carolina Rules of Civil Procedure, for an Order dismissing this case on the following grounds:

- 1) Lack of Subject Matter Jurisdiction – Plaintiff brings this action alleging improper sentence calculation. (Complaint, ¶ 46(a)). Plaintiff alleges that he his sentence was unilaterally increased without notice. (Complaint, ¶ 44). South Carolina law provides that, as to certain prison administrative decisions that affect an inmate's sentence, the inmate may seek review of an SCDC decision from the South Carolina Administrative Law Court. See Al-Shabazz v. State of South Carolina, 338 S.C. 354, 527 S.E.2d 742, 750 (S.C. 2000); see also Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506, 507 (S.C. 2004). These issues include situations where an inmate is disciplined and punishment is imposed, or when an inmate believes that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124, 126

ROA 0316

(S.C. 2003). Therefore, this case should be dismissed as the Administrative Law Court holds subject matter jurisdiction;

2) Improper Venue – Plaintiff has filed his Complaint in Richland County.

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 Ann. § 15-78-100(b). As a substantial amount of the claims in Plaintiff's case took place while incarcerated at Evans Correctional Institution, the proper venue is Chesterfield County;

3) Failure to State a Claim - Plaintiff has failed to state facts sufficient to constitute a cause of action against the South Carolina Department of Corrections. SCDC lacks the power, authority, and knowledge to defend against the allegations regarding the improper jurisdiction of the trial judge. As such, Plaintiff has failed to state a claim against SCDC for which SCDC can provide relief.

4) Failure to Join a Party Under Rule 19 – Plaintiff has failed to join a necessary party pursuant. Rule 19, SCRCP. The State of South Carolina, through the Attorney General, is a necessary party in this case because the State has an interest in defending the sentence imposed on the Plaintiff and ensuring the laws of criminal sentences imposed by the Legislature and Judiciary are carried out to their full legal and intended ends. In the alternative, Defendant would move to have the proper party joined.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings filed in this matter, and such other material as this court may deem just and proper.

ROA 0318


RILEY POPE & LANEY, LLC

Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414
Attorneys for Defendant

Columbia, South Carolina
December 22, 2016

ROA 0318

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Charles Eugene Carpenter)
)
Plaintiff)
vs.)
)
South Carolina Department of)
Corrections)
)
Defendant)

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-6916

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

RICHLAND COUNTY
FILED
2017 FEB 15 AM 10:45
JEANETTE W. MCBRIDE
C.C. & G.S.

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), SCRCP. 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.

(Handwritten signature)

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 a 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 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.

Ham

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.

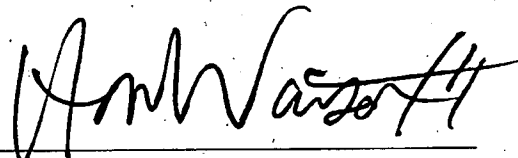
While SCDC has claimed that the Attorney General has an interest in this matter, the Attorney General has not asserted as much. That is so even though the Attorney General's office was properly served with a copy of the filed complaint in this action via certified mail on November 23, 2016. That silence 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.

Handwritten signature

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,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

February 10, 2017

STATE OF SOUTH CAROLINA) FIFTH JUDICIAL CIRCUIT
)
 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
)
) Case No. 2016-CP-40-6916
 Charles Eugene Carpenter)
 Plaintiff)
 vs.)
)
 The State of South Carolina, and)
 The South Carolina Department of)
 Corrections)
 Defendants)

AMENDED SUMMONS

2017 FEB 21 PM 3:21
 JENNIFER M. HOBBS
 C.C.P. & G.S.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at her office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


 Desa Ballard
 Harvey M. Watson III

Ballard & Watson
 Post Office Box 6338
 West Columbia, South Carolina 29171
 Telephone 803.796.9299
 Facsimile 803.796.1066
 desab@desaballard.com
 harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

February 21, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter, #181783,

Petitioner,

v.

State of South Carolina,
South Carolina Department of Corrections,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016-CP-40-06916

**RETURN AND MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS
CORPUS**

ROA 0327
FILED
CLERK OF COURT
MAY 10 2017
MAY 10 10

PLEASE TAKE NOTICE THAT the Defendant, the State of South Carolina¹, through the undersigned, will move before this Court on April 6, 2017, or at such other time and place as the Court determines, for an Order dismissing this action, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure. In response to the Petition for Writ of Habeas Corpus, filed by Charles Eugene Carpenter (Petitioner), by and through counsel, on November 18, 2016, the State would show this Court:

I. Procedural History

A. Underlying Convictions

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the State Grand Jury Clerk of Court. At a March 1990 session, the South Carolina State Grand Jury issued a seven (7) count superseding indictment against Petitioner and nine (9) other defendants. (1990-GS-47-05-001). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Marijuana (Count 1), and Trafficking in Marijuana (Count 2). At the same session, the South Carolina State Grand Jury issued a superseding eighteen (18) count indictment against Petitioner and ten (10) other defendants. (1990-GS-47-05-

¹ This motion is filed only on behalf of the State of South Carolina.

002). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Cocaine (Count 1), and Trafficking in Cocaine (Count 2). Petitioner was represented on the charges by Lionel S. Lofton, Esquire.

On April 7, 1990, Petitioner pled guilty before the Honorable Edward B. Cottingham to the conspiracy counts in both indictments, in return for the dismissal of the other counts as well as the dismissal of numerous other serious charges.² Petitioner pled pursuant to a written plea agreement which provided that he would receive concurrent twenty-five (25) year sentences on the conspiracy counts if he abided by the agreement and cooperated with authorities, but the State could request that the sentences be run *consecutively* if he failed to cooperate. Sentencing was deferred until June 4, 1990, where the parties returned before Judge Cottingham. Petitioner had moved to fire Mr. Lofton and retain new counsel, Timothy F. Rogers and Michael J. Cox, Esquires. Judge Cottingham allowed Mr. Rogers and Mr. Cox to appear but ordered Mr. Lofton to remain on the case due to his familiarity with the issues and the late nature of Petitioner's decision. Judge Cottingham sentenced Petitioner to twenty-five (25) years' and a \$200,000 fine on Indictment 90-002 (Cocaine), but deferred sentencing on 90-001 until a hearing could be held on the State's allegations that Petitioner had breached the plea agreement previously entered by refusing to cooperate.

Judge Cottingham convened a hearing to determine whether Petitioner had breached the plea agreement on August 9, 1990. Testimony was taken from various witnesses including investigators and a codefendant. At the conclusion of the hearing, Judge Cottingham found that

² While not part of the plea agreement, numerous charges brought by other jurisdictions were dismissed. Marlboro County burglary and kidnapping charges were dismissed. Richland County charges were dismissed. Federal firearm charges were dismissed out of the Florence Division of the U.S. Attorney's Office. It was agreed that sentences on pending North Carolina charges would be served concurrently with the South Carolina sentences. The State further agreed not to pursue charges against Petitioner for offenses that were committed prior to the State Grand Jury indictments.

Petitioner had willfully failed to cooperate with authorities and indeed had threatened witnesses and codefendants. Accordingly, Judge Cottingham found that Petitioner violated his obligations under the plea agreement and sentenced Petitioner to a consecutive twenty-five (25) years and \$50,000 fine on Indictment 90-001.

Judge Cottingham retained jurisdiction to allow Petitioner a final opportunity to cooperate with law enforcement as required by his plea agreement. On February 3, 1992, Judge Cottingham issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter.

A notice of appeal was timely filed and served on behalf of Petitioner by Mr. Rogers and Mr. Cox. A Transcript of Record was filed with the South Carolina Supreme Court on November 27, 1990. However, on April 12, 1991, Petitioner filed an affidavit requesting to withdraw his appeal, presumably because the imposition of the sentences was not final. A subsequent notice of appeal was filed on February 11, 1992. J. Christopher Mills, Esquire, and Barbara Anne Leitner, Esquire perfected the appeal. The Supreme Court affirmed Petitioner's convictions and sentences. State v. Carpenter, Op. No. 94-M O-182 (S.C. S. Ct. filed July 15, 1994).

B. PCR Action 1993-CP-13-0255

While the direct appeal was pending, Petitioner filed a petition for writ of habeas corpus dated October 29, 1993. The State filed a motion to dismiss the petition. Judge Cottingham granted the motion to dismiss by order dated March 15, 1994.

Petitioner filed a notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court affirmed Petitioner's convictions and sentences and ruled that Petitioner was not entitled to relief.

C. PCR Action 1995-CP-13-0244

Next, Petitioner filed an application for post-conviction relief on December 22, 1995. He asserted the following issues:

1. State Grand Jury lacked subject matter jurisdiction;
2. Single conspiracy;
3. Double jeopardy; and
4. Ineffective assistance of counsel.

The State filed a Return and Motion to Dismiss dated March 15, 1996. Petitioner followed with amended applications dated January 26, 1999, and January 28, 1999. The first hearing was held before the Honorable James E. Lockemy on October 8, 1997. Petitioner was represented by Melvin Roberts, Esquire. At this hearing, Petitioner requested access to all State Grand Jury transcripts regarding his case, which the court granted. The next hearing took place on July 20, 1998 where Petitioner testified on his own behalf and where the State called Mr. Lofton. The hearing was continued until August 24, 1998, so that further transcripts could be obtained. Further testimony from Petitioner and Mr. Lofton was taken at the subsequent hearing. Another hearing was held on January 26, 1999, to discuss various matters and to take more testimony from Petitioner.

On August 28, 1999, Judge Lockemy issued an Order of Dismissal rejecting Petitioner's claims. Mr. Roberts then filed a timely "Motion for Amendment to Judgement for a New Trial under Rule 52, SCRCF, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCF." The State filed a return on October 7, 1999. A hearing was held on the motion on November 11, 1999. Judge Lockemy then issued an Order dated March 10, 2000, in which he held his original Order of Dismissal correctly disposed of the issues raised by Petitioner.

A notice of appeal from Judge Lockemy's Order was timely served and filed. Paul V.

Cannarella, Esquire, represented Petitioner on appeal. On January 17, 2000, Mr. Cannarella filed a Petition for Writ of Certiorari, where he raised the following issues:

1. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the grounds of double jeopardy despite the fact that Petitioner was convicted of two counts of conspiracy where only one conspiracy occurred and in finding that trial counsel's failure to object on the ground of double jeopardy did not constitute ineffective assistance of counsel?
2. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that his guilty plea was not knowingly and voluntarily entered and in finding that counsel's failure to object to the unknowing and involuntary nature of the nature of the guilty plea did not constitute ineffective assistance of counsel?
3. Did the Circuit Court err in finding that counsel's failure to move to withdraw the guilty plea did not constitute ineffective assistance of counsel?
4. Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that there was a lack of subject matter jurisdiction to defective indictments and in finding that counsel's failure to file any pre-trial motion to question the jurisdiction of the State Grand Jury did not constitute ineffective assistance of counsel?
5. Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that Petitioner's sentence exceeds the sentence set out in the statute?
6. Did the Circuit Court err in finding that Petitioner was entitled to Post-Conviction Relief on the ground of the conditions of confinement and in finding that counsel's failure to investigate such did not constitute ineffective assistance of counsel?

The State filed a Return to the Petition for Writ of Certiorari dated April 18, 2000, and Petitioner followed with a Reply dated April 30, 2001. On December 13, 2001, the South Carolina Supreme Court denied certiorari, and the Remittitur was sent down on January 10, 2002.

D. Federal Habeas Corpus Petition

Petitioner then filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on November 12, 2002 (3:02-cv-3807-HMH). The State submitted a motion for summary judgment and memorandum in support on March 7, 2003. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and

ROA 0332

recommendation to grant summary judgment dated October 6, 2003. On January 21, 2004, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. By order filed July 1, 2004, the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

E. PCR Action 2008-CP-13-0281

Petitioner then filed a *third* application for post-conviction relief on July 3, 2008. The State filed a Return and Motion to Dismiss on October 24, 2008, requesting that the application be dismissed with prejudice because it was filed outside the statute of limitations and was successive to his previous applications. A hearing was convened at the Darlington County Courthouse on January 15, 2009, where Petitioner was present and represented by Tommy A. Thomas, Esquire. The State was represented by Karen C. Ratigan of the South Carolina Attorney General's Office. By order filed February 2, 2009, the Honorable John M. Milling dismissed Petitioner's application with prejudice. A motion to alter or amend was filed on March 13, 2009, and an amended order of dismissal was filed on April 9, 2009.

A timely notice of appeal was filed. Mr. Thomas stayed on to represent Petitioner on appeal and filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 21, 2009. The State filed its Return on November 20, 2009. The supreme court denied the petition on September 23, 2010. The Remittitur was issued on October 12, 2010.

F. Current Petition For Habeas Corpus

In this Petition for Writ of Habeas Corpus, Petitioner raises the following issues:

1. The trial court lacked jurisdiction;
2. SCDC violated Carpenter's due process rights;

3. SCDC violated Carpenter's equal protection rights by denying him sentencing in violation of his constitutional rights.

The South Carolina Department of Corrections filed a motion to dismiss on December 28, 2016 and a memorandum in support of that motion on February 15, 2017. A hearing was held on February 16, 2017, before the Honorable L. Casey Manning. As part of its motion to dismiss, SCDC argued that Petitioner failed to join the State as a necessary party pursuant to Rule 19, SCRPC. Judge Manning agreed with that argument and issued an Order of Joinder finding that "complete relief cannot be afford to the Plaintiff unless the State is joined as a necessary party to this action."

Respondent incorporates Petitioner's records from the State Grand Jury Clerk of Court; Petitioner's prior post-conviction relief records; and prior federal habeas corpus records. Respondent reserves the right to amend this Return upon receipt of any relevant materials

II. This Court lacks jurisdiction to entertain a petition for writ of habeas corpus.

This Court lacks subject matter jurisdiction under Rule 12(b)(1). Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. A state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)³. Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311–12 (Ct. App. 2002) (citing State v. Brown, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. Id. (citing State v. Brown, 343 S.C. 342, 346, 540

³ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S. Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation "which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

S.E.2d 846, 848 (2001)). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." Id.

Furthermore, "[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, 500 S.E.2d 123. In fact, *any* matter that is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d 426. A petitioner may allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d 123.

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 495 S.E.2d 426.

To warrant a hearing, the petition must include the two specific allegations. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, 495 S.E.2d 426; Hunter, 447 S.E.2d 203; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 495 S.E.2d 426. Second, the petition must allege sufficient facts to show why other remedies, such as

ROA 0335
PCR, are unavailable or inadequate. Gibson, 495 S.E.2d 426. Post-conviction relief is not rendered "unavailable or inadequate" merely because the petition might be dismissed as successive.

Here, the Petition must be dismissed because it is procedurally barred, leaving this Court without jurisdiction. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in a successive PCR application.⁴ The Petition fails to meet the standards required for the issuance of this extraordinary writ. The Petition contains no allegations that PCR remedies have been exhausted nor any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. Petitioner could have and has raised these allegations in a prior PCR application. For example, Petitioner argues that the trial judge lacked jurisdiction and that he has completed service of his sentence. These issues are squarely cognizable under the PCR act and could be raised before the PCR court. Since the Petition is procedurally barred, the only remaining form of relief is left to the South Carolina Supreme Court under its original jurisdiction, leaving this Court without jurisdiction. The failure to properly file this action in the proper venue requires dismissal of this action for lack of jurisdiction. Thus, these claims cannot be raised in a petition for habeas corpus in the Circuit Courts of South Carolina.

III. Petitioner's subject matter jurisdiction allegation is barred by *res judicata*.

The doctrine of *res judicata* bars the Petitioner from seeking the relief granted in this action. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (quoting Plum Creek Dev.

⁴ If this Court construes this Petition as a PCR application, the State reserves the right to file an appropriate return and to raise any applicable defenses.

Co. v. City of Conway, 334 S.C. 34, 512 S.E.2d 109 (1999)). The elements of *res judicata* are:

(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Judy, 393 S.C. at 167, 712 S.E.2d at 412 (citing Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992)). “[F]or purposes of *res judicata*, a ‘cause of action’ is not the form of action in which a claim is asserted but, rather the ‘cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.’” Plum Creek Dev. Co., 334 S.C. at 36, 512 S.E.2d at 110 (quoting 50 C.J.S. Judgment § 749 (1997)).

Here, Petitioner has litigated the trial court’s subject matter jurisdiction in previous collateral attacks. This issue was first raised in Petitioner’s 1995 PCR action. It was also raised in his Petition for Writ of Certiorari, from the appeal of his 1995 PCR, to the South Carolina Supreme Court. That petition was denied. Petitioner raised this issue again in his federal habeas corpus action. In both instances, the State of South Carolina was the defendant and was represented by the South Carolina Attorney General’s Office. Therefore, since this very issue has been finally adjudicated in an action involving the same parties, *res judicata* bars Petitioner from seeking the relief in this action. Accordingly, this action should be dismissed.

III.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

IV.

WHEREFORE, Respondent moves to summarily dismiss the Petition for Writ of Habeas Corpus because state habeas petitions must be filed in the original jurisdiction of the Supreme Court of South Carolina and because the action is barred by the doctrine of *res judicata*.

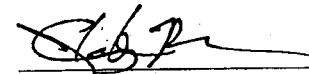
Respectfully submitted,

ALAN WILSON
Attorney General

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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
3 / 23, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter, #181783,

Petitioner,

v.

State of South Carolina,
South Carolina Department of Corrections,

Respondent.

ROA 0338
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016-CP-40-06916

AMENDED RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS

FILED
MAY - 1 PM 12:38
JANETTE W. MOORE
C.C.P. & G.S.

In response to the Petition for Writ of Habeas Corpus, filed by Charles Eugene Carpenter (Petitioner), by and through counsel, on November 18, 2016, the State would show this Court:

I. Procedural History

A. Underlying Convictions

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the State Grand Jury Clerk of Court. At a March 1990 session, the South Carolina State Grand Jury (SGJ) issued a seven (7) count superseding indictment against Petitioner and nine (9) other defendants. (1990-GS-47-05-001). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Marijuana (Count 1), and Trafficking in Marijuana (Count 2). At the same session, the South Carolina State Grand Jury issued a superseding eighteen (18) count indictment against Petitioner and ten (10) other defendants. (1990-GS-47-05-002). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Cocaine (Count 1), and Trafficking in Cocaine (Count 2). Petitioner was represented on the charges by Lionel S. Lofton, Esquire.

On April 7, 1990, Petitioner pled guilty before the Honorable Edward B. Cottingham to the conspiracy counts in both indictments in return for the dismissal of the other counts as well

as the dismissal of numerous other serious charges.¹ Petitioner pled pursuant to a written plea agreement which provided that he would receive concurrent twenty-five (25) year sentences on the conspiracy counts if he abided by the agreement and cooperated with authorities, but the State could request that the sentences be run *consecutively* if he failed to cooperate. Sentencing was deferred until June 4, 1990, where the parties returned before Judge Cottingham. Petitioner had moved to fire Mr. Lofton and retain new counsel, Timothy F. Rogers and Michael J. Cox, Esquires. Judge Cottingham allowed Mr. Rogers and Mr. Cox to appear but ordered Mr. Lofton to remain on the case due to his familiarity with the issues and the late nature of Petitioner's decision. Judge Cottingham sentenced Petitioner to twenty-five (25) years' and a \$200,000 fine on Indictment 90-002 (Cocaine), but deferred sentencing on 90-001 until a hearing could be held on the State's allegations that Petitioner had breached the plea agreement previously entered by refusing to cooperate.

Judge Cottingham convened a hearing to determine whether Petitioner had breached the plea agreement on August 9, 1990. Testimony was taken from various witnesses including investigators and a codefendant. At the conclusion of the hearing, Judge Cottingham found that Petitioner had willfully failed to cooperate with authorities and indeed had threatened witnesses and codefendants. Accordingly, Judge Cottingham found that Petitioner violated his obligations under the plea agreement and sentenced Petitioner to a consecutive twenty-five (25) years and \$50,000 fine on Indictment 90-001.

¹ While not part of the plea agreement, numerous charges brought by other jurisdictions were dismissed. Marlboro County burglary and kidnapping charges were dismissed. Richland County charges were dismissed. Federal firearm charges were dismissed out of the Florence Division of the U.S. Attorney's Office. It was agreed that sentences on pending North Carolina charges would be served concurrently with the South Carolina sentences. The State further agreed not to pursue charges against Petitioner for offenses that were committed prior to the State Grand Jury indictments.

Judge Cottingham retained jurisdiction to allow Petitioner a final opportunity to cooperate with law enforcement as required by his plea agreement. On February 3, 1992, Judge Cottingham issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter.

A notice of appeal was timely filed and served on behalf of Petitioner by Mr. Rogers and Mr. Cox. A Transcript of Record was filed with the South Carolina Supreme Court on November 27, 1990. However, on April 12, 1991, Petitioner filed an affidavit requesting to withdraw his appeal, presumably because the imposition of the sentences was not final. A subsequent notice of appeal was filed on February 11, 1992. J. Christopher Mills, Esquire, and Barbara Anne Leitner, Esquire perfected the appeal. The Supreme Court affirmed Petitioner's convictions and sentences. State v. Carpenter, Op. No. 94-M O-182 (S.C. S. Ct. filed July 15, 1994).

B. PCR Action 1993-CP-13-0255

While the direct appeal was pending, Petitioner filed a petition for writ of habeas corpus dated October 29, 1993. The State filed a motion to dismiss the petition. Judge Cottingham granted the motion to dismiss by order dated March 15, 1994.

Petitioner filed a notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court affirmed Petitioner's convictions and sentences and ruled that Petitioner was not entitled to relief.

C. PCR Action 1995-CP-13-0244

Next, Petitioner filed an application for post-conviction relief on December 22, 1995. He asserted the following issues:

1. State Grand Jury lacked subject matter jurisdiction;
2. Single conspiracy;
3. Double jeopardy; and
4. Ineffective assistance of counsel.

The State filed a Return and Motion to Dismiss dated March 15, 1996. Petitioner followed with amended applications dated January 26, 1999, and January 28, 1999. The first hearing was held before the Honorable James E. Lockemy on October 8, 1997. Petitioner was represented by Melvin Roberts, Esquire. At this hearing, Petitioner requested access to all State Grand Jury transcripts regarding his case, which the court granted. The next hearing took place on July 20, 1998, where Petitioner testified on his own behalf and where the State called Mr. Lofton. The hearing was continued until August 24, 1998, so that further transcripts could be obtained. Further testimony from Petitioner and Mr. Lofton was taken at the subsequent hearing. Another hearing was held on January 26, 1999, to discuss various matters and to take more testimony from Petitioner.

On August 28, 1999, Judge Lockemy issued an Order of Dismissal rejecting Petitioner's claims. Mr. Roberts then filed a timely "Motion for Amendment to Judgement for a New Trial under Rule 52, SCRCP, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP." The State filed a return on October 7, 1999. A hearing was held on the motion on November 11, 1999. Judge Lockemy then issued an Order dated March 10, 2000, in which he held his original Order of Dismissal correctly disposed of the issues raised by Petitioner.

A notice of appeal from Judge Lockemy's Order was timely served and filed. Paul V. Cannarella, Esquire, represented Petitioner on appeal. On January 17, 2000, Mr. Cannarella filed a Petition for Writ of Certiorari, where he raised the following issues:

1. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the grounds of double jeopardy despite the fact that Petitioner was convicted of two counts of conspiracy where only one conspiracy occurred and in finding that trial counsel's failure to object on the ground of double jeopardy did not constitute ineffective assistance of counsel?
2. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that his guilty plea was not knowingly and

voluntarily entered and in finding that counsel's failure to object to the unknowing and involuntary nature of the nature of the guilty plea did not constitute ineffective assistance of counsel?

3. Did the Circuit Court err in finding that counsel's failure to move to withdraw the guilty plea did not constitute ineffective assistance of counsel?
4. Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that there was a lack of subject matter jurisdiction to defective indictments and in finding that counsel's failure to file any pre-trial motion to question the jurisdiction of the State Grand Jury did not constitute ineffective assistance of counsel?
5. Did the circuit court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that Petitioner's sentence exceeds the sentence set out in the statute?
6. Did the Circuit Court err in finding that Petitioner was entitled to Post-Conviction Relief on the ground of the conditions of confinement and in finding that counsel's failure to investigate such did not constitute ineffective assistance of counsel?

The State filed a Return to the Petition for Writ of Certiorari dated April 18, 2000, and Petitioner followed with a Reply dated April 30, 2001. On December 13, 2001, the South Carolina Supreme Court denied certiorari, and the Remittitur was sent down on January 10, 2002.

D. Federal Habeas Corpus Petition

Petitioner then filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on November 12, 2002 (3:02-cv-3807-HMH). The State submitted a motion for summary judgment and memorandum in support on March 7, 2003. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant summary judgment dated October 6, 2003. On January 21, 2004, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. By order filed July 1, 2004, the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

E. PCR Action 2008-CP-13-0281

Petitioner then filed a *third* application for post-conviction relief on July 3, 2008. The State filed a Return and Motion to Dismiss on October 24, 2008, requesting that the application be dismissed with prejudice because it was filed outside the statute of limitations and was successive to his previous applications. A hearing was convened at the Darlington County Courthouse on January 15, 2009, where Petitioner was present and represented by Tommy A. Thomas, Esquire. The State was represented by Karen C. Ratigan of the South Carolina Attorney General's Office. By order filed February 2, 2009, the Honorable John M. Milling dismissed Petitioner's application with prejudice. A motion to alter or amend was filed on March 13, 2009, and an amended order of dismissal was filed on April 9, 2009.

A timely notice of appeal was filed. Mr. Thomas stayed on to represent Petitioner on appeal and filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 21, 2009. The State filed its Return on November 20, 2009. The Supreme Court denied the petition on September 23, 2010. The Remittitur was issued on October 12, 2010.

F. Current Petition For Habeas Corpus

In this Petition for Writ of Habeas Corpus, Petitioner raises the following issues:

1. The trial court lacked jurisdiction;
2. SCDC violated Carpenter's due process rights;
3. SCDC violated Carpenter's equal protection rights by denying him sentencing in violation of his constitutional rights.

The South Carolina Department of Corrections filed a motion to dismiss on December 28, 2016 and a memorandum in support of that motion on February 15, 2017. A hearing was held on February 16, 2017, before the Honorable L. Casey Manning. As part of its motion to dismiss, SCDC argued that Petitioner failed to join the State as a necessary party pursuant to Rule 19, SCRPC. Judge Manning agreed with that argument and issued an Order of Joinder finding that

“complete relief cannot be afforded to the Plaintiff unless the State is joined as a necessary party to this action.”

Respondent incorporates Petitioner's records from the State Grand Jury Clerk of Court, Petitioner's prior post-conviction relief records, and prior federal habeas corpus records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Discussion

Historically, a petition for a writ of habeas corpus was a common-law writ for relief and only available to attack the jurisdiction of the court who imposed the sentence. See Williams v. Ozmint, 380 S.C. 473, 476, 671 S.E.2d 600, 601 (2008) (citing Ex parte Klugh, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court whose judgment is challenged)). “The great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention.” Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting Walker v. Wainwright, 390 U.S. 335, 336, 88 S. Ct. 962, 963 (1968)). The enactment of the Uniform Post-Conviction Procedure Act², however, “drastically limited the availability of habeas corpus.” Id. (citation omitted). Post-conviction relief was intended to include all “relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy.” See Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 430 (1998); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting post-conviction relief “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence”).

² S.C. Code Ann. §§ 17-27-10, et. seq. (2003).

Regardless, the South Carolina Constitution provides for the possibility of habeas corpus relief. S.C. Const. Art. 1, § 18. "Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights. For these reasons, a defendant bears a much higher burden in a habeas proceeding." Williams v. Ozmint, 380 S.C. at 477, 671 S.E.2d at 602. A writ of habeas corpus is reserved for only the most serious of constitutional violations which – in the setting – constitute a "denial of fundamental fairness shocking to the universal sense of justice." Id. (citing Green v. Maynard, 349 S.C. 535, 538, 564 S.E.2d 83, 84 (2002)); see also Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). This Court has held, however, that not "every constitutional error at trial will justify issuance of the writ." McWee v. State, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (quoting Green v. Maynard, 349 S.C. at 538, 564 S.E.2d at 84). This Court will grant a writ of habeas corpus only under "unique and compelling circumstances." Id. Habeas corpus is available only when other remedies – such as post-conviction relief – are either inadequate or unavailable. See Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998).

A. Petitioner is procedurally barred from raising this action.

The Petition must be denied because it is procedurally barred. A state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)³. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in a successive PCR application filed in the appropriate county.⁴ Furthermore, "[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

³ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S. Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation "which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

⁴ The State notes that Petitioner's underlying charges arise from Chesterfield County, not Richland.

a PCR application.” Keeler, 500 S.E.2d 123. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. 568, 500 S.E.2d 123. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d 426. A petitioner may allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d 123.

The Petition fails to meet the standards required for the issuance of this extraordinary writ. The Petition is improperly filed in the circuit court as it must be filed in the original jurisdiction of the Supreme Court. Furthermore, the Petition contains no allegations that PCR remedies have been exhausted nor any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. The filing of a PCR application is the proper way to bring this action. The allegations that the trial court lacked jurisdiction to impose the sentence is explicitly covered by the PCR act. See S.C. Code Ann. § 17-27-20(A) (“Any person who has been convicted of, or sentenced for, a crime and who claims: . . . (2) That the court was without jurisdiction to impose the sentence.” Petitioner’s other allegation that his sentence has expired is also explicitly covered the PCR act. See S.C. Code Ann. § 17-27-20(A) (“(5) That his sentence has expired . . .” These allegations are cognizable under the PCR act and Petitioner cannot show that PCR is unavailable or inadequate to address his claims, so this Petition must be denied.

B. The trial court was vested with continuing jurisdiction and therefore exercised proper jurisdiction when deferring sentencing on the trafficking in marijuana indictment.

Turning to the merits of Petitioner’s allegations, the trial court had proper jurisdiction to

impose the sentences. Petitioner argues that the trial court did not have jurisdiction to impose a sentence on the trafficking in marijuana indictment. Specifically, Petitioner argues that he was sentenced to concurrent terms on June 4, 1990. The State asserts the trial court exercised proper jurisdiction over the case in deferring sentencing and imposing a consecutive twenty-five (25) year sentence.

An applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. The record completely refutes Petitioner’s claims that the trial judge improperly deferred sentencing while retaining jurisdiction over the case.

The chief administrative judge for general sessions for the Fifth Judicial Circuit oversees the State Grand Jury and is referred to as the “presiding judge” throughout the State Grand Jury Act. S.C Code Ann. § 14-7-1630(B). The presiding judge is responsible for the docket management of all criminal and civil proceedings arising out of the State Grand Jury including issues with subpoenas, the impanelment of the jurors, and the bond hearings for defendants indicted by the SGJ. The presiding judge also handles all of the administrative matters relating to the SGJ including issuance of orders, search warrants, and arrest warrants. Id. Once a defendant is indicted and after a venue order is entered, the Chief Justice of the Supreme Court assigns a judge to “take jurisdiction of and preside over all civil and criminal proceedings, with the exception of post-conviction relief matters, arising out of that investigation and set terms of court for the trial of these cases in the county where venue is set by the Presiding Judge of the State

Grand Jury." See Administrative Order State Grand Jury, S.C. Sup. Ct. Order dated March 20, 2003.⁵

In Petitioner's case, venue was ordered in Chesterfield County. Judge Cottingham was assigned by the Chief Justice to preside over all cases arising out of the investigation. With that order, Judge Cottingham had jurisdiction over Petitioner's case along with his codefendants' cases. This allowed Judge Cottingham to get a full picture of the investigation and the allegations set forth in the indictments. Judge Cottingham had the authority to manage Petitioner's case as he saw fit. The trial court was not limited in its jurisdiction as it may have been if Judge Cottingham had been assigned a specific weekly term of court because he was vested with continuing jurisdiction over the case.

Petitioner further argues that Judge Cottingham was without authority to defer sentencing. Since there was clearly continuing jurisdiction over Petitioner's case, the question turns to whether Judge Cottingham properly deferred sentencing. "Judgment in a criminal case is not final until sentence is imposed." State v. Robinson, 287 S.C. 173, 337 S.E.2d 204 (1985). Here, Petitioner's sentence was not final until he was sentenced on the trafficking in marijuana charge. That sentence was imposed on August 9, 1990 as evident by the sentencing sheet. Judge Cottingham was well within his authority to defer sentencing and to provide Petitioner an opportunity to cooperate as set forth in the plea agreement.

C. Petitioner's sentence has not expired.

Petitioner further argues that his sentence has expired. This is based on the faulty assumption that he was sentenced to concurrent terms of twenty-five (25) years' imprisonment.

⁵ The State notes that this Order was issued after Petitioner has been sentenced, but that these were the procedures in place at the time. The Supreme Court issued an order that "the Honorable Edward B. Cottingham, be, and he hereby is, vested with concurrent jurisdiction in all circuits of the state to dispose of all common pleas and general sessions matters, including trials by jury, arising from State Grand Jury Investigation No. 89-005." S. Ct. Order issued November 15, 1989.

The comprehensive record shows that Petitioner was sentenced to *consecutive* terms of twenty-five (25) years' imprisonment. If this court were to find that the trial court did not have jurisdiction, then a sentence would not have been imposed on the trafficking marijuana indictment. This would not require release and could possibly require a remand to have that sentence imposed.

III.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

IV.

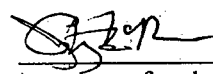
For the reasons stated above, this Court should deny the petition for writ of habeas corpus.

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for the Respondent

Columbia, South Carolina
April 28, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

State of South Carolina and the South
Carolina Department of Corrections,

Defendant.

ROA 0350
IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

ANSWER ON BEHALF OF THE
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

2017 MAY 10 PM 2:08
JEANNE M. MCBRIDE
Clerk
ROA AND OFFICE
FILED

(Our File No.: 5021.01216)

Defendant South Carolina Department of Corrections ("SCDC") by and through
its undersigned counsel and by way of Answer to Plaintiff's Complaint and Petition for
Habeas Corpus herein allege as follows:

FOR A FIRST DEFENSE

1. Plaintiff has failed to pursue and exhaust appropriate administrative
remedies.

FOR A SECOND DEFENSE

1. At all times relevant to the Complaint, Defendants did not engage in any
conduct which in any way violated or infringed upon Plaintiff's rights under the United
States Constitution or any other Federal right, privilege or immunity.

FOR A THIRD DEFENSE

1. That each and every allegation contained in the Complaint not specifically
admitted, denied, or otherwise qualified is hereby denied and strict proof demanded.

2. That paragraphs 1 through 3 are admitted upon information and belief.

3. That paragraph admits the first sentence of paragraph 4. The remaining allegations are denied and strict proof is demanded.

4. Paragraph 5 is answered as consistent with the above statements.

5. That paragraphs 6 through 38 are allegations relating to Plaintiff's guilty pleas and sentences which are directed to the State of South Carolina and no response is required by this Defendant. To the extent the Court would deem responses required, the Defendant craves reference to and incorporates by reference the responses to said allegations in the State's response filed with the Court. To the extent the allegations seek to establish liability against SCDC, the allegations are expressly denied and strict proof is demanded thereof.

6. That paragraphs 39 through 45 are admitted insofar as they can be construed to allege that Plaintiff's max-out date was adjusted to ultimately reflect his true and correct sentence of a total of 50 years incarceration (25 years plus 25 years consecutive) imposed on the sentencing sheets by the trial judge. Any allegations inconsistent herewith is denied. Any allegation alleging a due process violation is denied. Any allegations seeking to impose liability on the Defendant is denied and strict proof is demanded thereof.

7. That paragraph 46 is denied and strict proof is demanded thereof.

8. Paragraph 47 is answered as consistent with the above statements.

9. That Defendant is without sufficient information to admit or deny the allegations in paragraphs 48, 49, 50, 52, 54, and 56 and, therefore, those allegations are denied and strict proof is demanded thereof.

10. That Defendant admits paragraph 51, 53 and 55 to the extent the allegations allege Plaintiff is serving 50 years imprisonment day for day as provided by

the sentencing statute in effect at the time of his sentencing. The remaining allegations are denied.

11. That paragraphs 57, 58, and 59 are denied and strict proof is demanded.
12. Paragraph 60 is answered as consistent with the above statements.
13. That paragraphs 61, 62, 63, 64 and 65 are denied and strict proof is demanded.
14. That Defendants denies Plaintiff is entitled to the relief requested.

FOR A FOURTH DEFENSE

1. That Plaintiff's claims are barred by the doctrines of *res judicata*, judicial estoppel and/or collateral estoppel.

FOR A FIFTH DEFENSE

1. Defendant is entitled to immunity from Plaintiff's claims pursuant to the Eleventh Amendment of the United States Constitution.

FOR A SIXTH DEFENSE

1. Defendants is entitled to sovereign immunity from Plaintiff's claims under the United States Constitution, the South Carolina Constitution, common law and as excepted by S.C. Code Ann. § 15-78-60.

FOR A SEVENTH DEFENSE

1. That the Plaintiff's claims are barred by the applicable statute of limitations under statute and/or common law.

FOR AN EIGHTH DEFENSE

1. Defendant, at all times relevant hereto and during the performance or non-performance of the acts alleged in the Complaint, did not perform any acts, or fail to

perform any acts, in bad faith, in a malicious manner, with corrupt motives, or with deliberate indifference and, therefore, is immune from suit.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendant SCDC

Columbia, South Carolina
May 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

State of South Carolina and South Carolina
Department of Corrections,

Defendants.

(Our File No.: 5021.01216)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**NOTICE OF MOTION
AND
DEFENDANT SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS'
MOTION TO BIFURCATE TRIAL**

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Department of Corrections, by and through its undersigned counsel, does hereby move pursuant to Rules 42(b), South Carolina Rules of Civil Procedure, for an Order bifurcating the trial for the allegations of an err in sentence credits on following grounds:

- 1) Plaintiff brings this action as a Complaint for declaratory judgment and habeas corpus petition alleging that his original sentences were unlawful or void, that his due process rights were violated regarding the change in his max-out date, and alleging he was not given appropriate sentence related credits.
- 2) Plaintiff has requested an expedited hearing on the habeas corpus petition, which has been scheduled to take place during a term of motion hearings on May 18, 2017, at 11:00 a.m. The hearing is set as the 9th hearing for 11:00 a.m., with an additional hearing scheduled after the motion as well as motions beginning at 2:00 p.m.

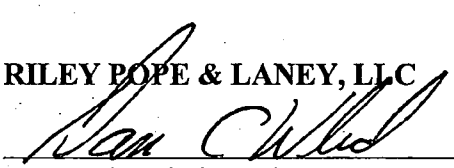
ROA 0354

2017 MAY 10 PM 2:08
JANETTE W. MOSENFELDER
C.P. & C.S.
FILED
RICHLAND COUNTY

- 3) Defendant anticipates the need to call one or more witnesses to testify in its case in chief as to the issue of sentence credits and there does not appear to be enough time allotted for the hearing on all issues.
- 4) Defendant SCDC requests that the issue of sentence related credits be bifurcated from the remaining issues and rescheduled as a bench trial.
- 5) Defendant SCDC does not believe the Plaintiff will be prejudiced by bifurcating the single issue on the grounds that if Plaintiff prevails on the issue of the validity of the twenty-five (25) year consecutive sentence, the issue of sentence credits would be moot.
- 6) Defendant SCDC is prepared to proceed on the allegation of due process violation with regard to the change in Plaintiff's max-out date without witness testimony.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings filed in this matter, and such other material as this court may deem just and proper.

RILEY POPE & LANEY, LLC


Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414
Attorneys for Defendant SCDC

Columbia, South Carolina
May 10, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Charles Eugene Carpenter)
)
Plaintiff)
vs.)
)
South Carolina Department of)
Corrections, and State of South)
Carolina)
Defendant)

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-6916

AFFIDAVIT OF DEFAULT
South Carolina Department of Corrections

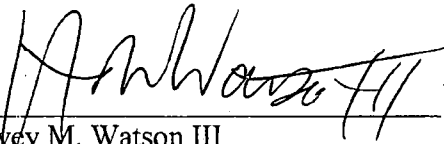
RICHLAND COUNTY
FILED
2017 MAY 12 AM 9:16
JEANETTE W. MCBRIDE
C.P. & G.S.

Personally appeared before me, Harvey M. Watson III, who after being duly sworn,
deposes and states the following:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except those matters which are stated on information and belief, and as to those, I have a good faith belief that they are true.
2. I am counsel for plaintiff in the referenced action.
3. The South Carolina Department of Corrections (SCDC) filed a motion to dismiss, which was heard by retired Chief Justice Jean Toal on April 6, 2017. **Exhibit A.**
4. At the hearing before Justice Toal on April 6, 2017, she verbally denied the motion to dismiss filed by SCDC. Her subsequent written order, filed on April 25, 2017, confirmed her ruling and provided that "[d]efendants have 15 days from the date of the hearing (April 6, 2017) to file their answers to the complaint and petition. . .". A copy of Justice Toal's order is attached hereto as **Exhibit B.**
5. SCDC did not request any extensions of time. Their answer was due to be filed and served no later than April 21, 2017 based on Justice Toal's order.

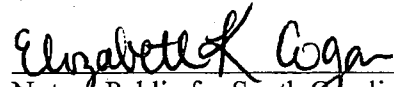
6. On May 10, 2017, without obtaining leave of the court to file an answer out of time, SCDC filed and served an answer to the complaint.
7. The answer is not timely and SCDC is in default as to the complaint in this matter.

FURTHER, deponent sayeth not.



Harvey M. Watson III

Sworn to before me this
12 day of May 2017.



Notary Public for South Carolina
My commission expires: 11-1-2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

vs.

South Carolina Department of Corrections

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**MOTION INFORMATION FORM
AND COVERSHEET**

(5167.01715)

Plaintiff's Attorney:

Desa Ballard, Esquire
Harvey M. Watson III, Esquire
Ballard & Watson
PO Box 6338
West Columbia, SC 29171
Phone: 803-796-9299
Fax: 803-796-1066
Email: desab@desaballard.com
Harvey@desaballard.com

Defendant's Attorney:

Damon C. Wlodarczyk, SC Bar #70460
Riley Pope & Laney, LLC
Post Office Box 11412
Columbia, South Carolina 29211
Tel: (803) 799-9993/Fax: (803) 239-1414
damonw@rlfirm.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete Sections I & III)
☐ **FORM MOTION, NO HEARING REQUESTED** (Complete Sections II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (Complete Sections II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

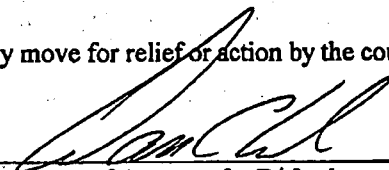
Estimated Time Needed: 30 minutes

Court Reporter Needed: Yes

SECTION II: Motion Type

- ☒ Written Motion Attached
☐ Form Motion:

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Defendant

December 22, 2016
Date Submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$
☐ EXEMPT: (check reason)

- ☒ State Agency v. Indigent Party
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ Motion for Execution
☐ Other

JUDGE'S SECTION

- ☐ Motion fee to be paid upon filing of the attached Order.
☐ Other:

JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____
(Print Name)

DATE FILED:

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-2003)

ROA 0358

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

MOTION TO DISMISS

(Our File No.: 5021.01216)

YOU WILL PLEASE TAKE NOTICE that Defendant, by and through its undersigned counsel, do hereby move pursuant to Rules 12(b)(1),(3),(6), and (9), South Carolina Rules of Civil Procedure, for an Order dismissing this case on the following grounds:

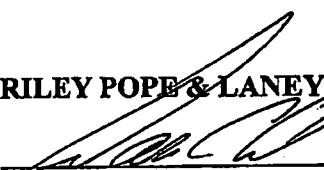
- 1) Lack of Subject Matter Jurisdiction – Plaintiff brings this action alleging improper sentence calculation. (Complaint, ¶ 46(a)). Plaintiff alleges that he his sentence was unilaterally increased without notice. (Complaint, ¶ 44). South Carolina law provides that, as to certain prison administrative decisions that affect an inmate's sentence, the inmate may seek review of an SCDC decision from the South Carolina Administrative Law Court. See Al-Shabazz v. State of South Carolina, 338 S.C. 354, 527 S.E.2d 742, 750 (S.C. 2000); see also Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506, 507 (S.C. 2004). These issues include situations where an inmate is disciplined and punishment is imposed, or when an inmate believes that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124, 126

(S.C. 2003). Therefore, this case should be dismissed as the Administrative Law Court holds subject matter jurisdiction;

- 2) Improper Venue – Plaintiff has filed his Complaint in Richland County. 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 Ann. § 15-78-100(b). As a substantial amount of the claims in Plaintiff's case took place while incarcerated at Evans Correctional Institution, the proper venue is Chesterfield County;
- 3) Failure to State a Claim - Plaintiff has failed to state facts sufficient to constitute a cause of action against the South Carolina Department of Corrections. SCDC lacks the power, authority, and knowledge to defend against the allegations regarding the improper jurisdiction of the trial judge. As such, Plaintiff has failed to state a claim against SCDC for which SCDC can provide relief.
- 4) Failure to Join a Party Under Rule 19 – Plaintiff has failed to join a necessary party pursuant. Rule 19, SCRCP. The State of South Carolina, through the Attorney General, is a necessary party in this case because the State has an interest in defending the sentence imposed on the Plaintiff and ensuring the laws of criminal sentences imposed by the Legislature and Judiciary are carried out to their full legal and intended ends. In the alternative, Defendant would move to have the proper party joined.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings filed in this matter, and such other material as this court may deem just and proper.

ROA 0361


RILEY POPE & LANEY, LLC

Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414
Attorneys for Defendant

Columbia, South Carolina
December 22, 2016

ROA 0361

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS

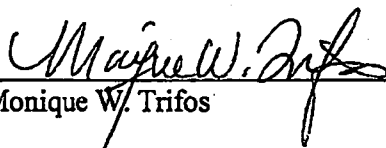
C/A NO.: 2016-CP-40-06916

CERTIFICATE OF SERVICE

(Our File No.: 5021.01216)

This is to certify that I, Monique W. Trifos, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached **MOTION TO DISMISS** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Desa Ballard, Esquire
Harvey M. Watson III, Esquire
Ballard & Watson
PO Box 6338
West Columbia, SC 29171



Monique W. Trifos

Columbia, South Carolina
December 22, 2016

FORM 4

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 _____

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

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, 20 17 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)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Charles Eugene Carpenter)
 Plaintiff)
 vs.)
 South Carolina Department of)
 Corrections, and State of South)
 Carolina)
 Defendant)

FIFTH JUDICIAL CIRCUIT
 IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-6916

ORDER DENYING MOTIONS TO DISMISS

2017 APR 25 PM 1:30
 RICHLAND COUNTY
 JENNIFER L. BROWN, CLERK

#1
 JST
 Plaintiff Charles E. Carpenter (hereafter "Carpenter") is incarcerated at the South Carolina Department of Corrections (hereafter "SCDC"). He filed this action against SCDC for declaratory relief and also filed a Petition for Writ of Habeas Corpus. SCDC moved to dismiss, and Circuit Court Judge Casey Manning issued an order (filed on February 23, 2017) requiring the addition of the State of South Carolina as a defendant by serving the Attorney General (hereafter "the AG"). The AG thereafter filed a motion to dismiss, and both motions to dismiss were heard before me on April 6, 2017.

The motions to dismiss are both denied, for the reasons set forth herein, and this Court finds that jurisdiction to hear Carpenter's matter is vested in this Court, which is fully able to hear the merits of the matters presented. In light of the denial of them motions to dismiss, the defendants are given fifteen (15) to file answers to the complaint and petition.

The complaint, and exhibits attached, establish the following facts:

Carpenter entered a guilty plea to two (2) charges of violation of S.C. Code Ann. Section 44-53-370 on two indictments¹ in a plea agreement dated April 7, 1990. Pursuant to the plea

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).

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.

#2
JST
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
JAT
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.

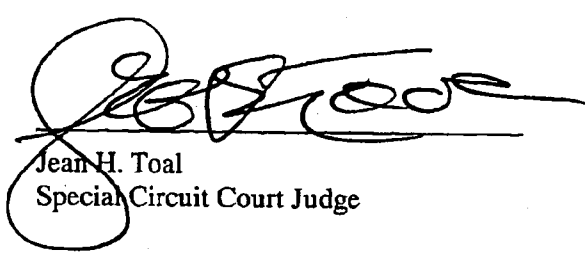
ACF
As to PCR relief, that statutory procedure exists for purposes of challenging constitution violations related to the criminal conviction, and is not the exclusive method for challenging an unlawful sentence. See *e.g.* Williams v. Ozmint 380 S.C. 473, 671 S.E.2d 600 (2008). Declaratory relief is 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).

45
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 19, 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)
)
COUNTY OF RICHLAND)
)
Charles Eugene Carpenter)
)
Plaintiff)
vs.)
)
South Carolina Department of)
Corrections, and State of South)
Carolina)
Defendant)

ROA 0369
FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Case No. 2016-CP-40-6916

**AFFIDAVIT OF DEFAULT
STATE OF SOUTH CAROLINA**

FILED
2017 MAY 12 PM 3:09
JEANETTE W. MANNING
C.C.P. & C.S. CLERK

Personally appeared before me, Harvey M. Watson III, who after being duly sworn,
deposes and states as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except those matters which are stated on information and belief, and as to those, I have a good faith belief that they are true.
2. I am counsel for plaintiff in the referenced action. As required by Judge Manning's order filed February 23, 2017, the Attorney General accepted service of the Complaint in this action as evidenced by the Acceptance of Service dated February 21, 2017, a copy of which was filed with the clerk of court on February 27, 2017. A clocked copy of the Acceptance of Service is attached hereto as **Exhibit A**.
3. As indicated by the Affidavit of Service of Clarence Portee dated March 1, 2017, a copy of the Order for Joinder (Judge Manning's order) and the Petition for Writ of Habeas Corpus were served upon the Attorney General, a copy of which was filed with the clerk of court on March 1, 2017. A clocked copy of the Affidavit of Service is attached hereto as **Exhibit B**.

4. The State filed a motion to dismiss, which was heard by retired Chief Justice Jean Toal on April 6, 2017. Prior to the hearing, my partner, Desa Ballard, emailed with Clay Mitchell, counsel for the State, and asked if he was planning to file an answer (he had already filed and served his return to the petition for writ of habeas corpus and motion to dismiss prior on March 22, 2017). He said he was not. **Exhibit C.**
5. At the hearing before Justice Toal on April 6, 2017, she verbally denied the motions to dismiss filed both by the State and by the South Carolina Department of Corrections, and gave both parties 15 days to file an answer and response to petition for writ of habeas corpus. Her subsequent written order, filed on April 25, 2017, confirmed her ruling and provided that “[d]efendants have 15 days from the date of the hearing (April 6, 2017) to file their answers to the complaint and petition...”. A copy of Justice Toal’s order is attached hereto as **Exhibit D.**
6. On April 20, 2017, counsel for the State asked for “a few extra days to get an answer filed.” His request was granted by my partner, Desa Ballard, making the revised deadline for the answer to complaint and response to petition for writ of habeas corpus April 28, 2017. **Exhibit E.**
7. Thereafter, the undersigned (as counsel for Mr. Carpenter) was served on April 28, 2017 by the State with an “Amended Return to Petition for Writ of Habeas Corpus.” This was an amendment to the Return and Motion to Dismiss Petition for Writ of Habeas Corpus filed earlier by the State prior to the hearing before Justice Toal. The Amended Return does not address the allegations of the complaint, and thus upon information and belief does not operate as an Answer.
8. No Answer has been filed by the State and the time for answering has expired.

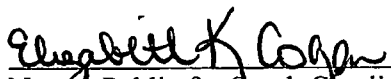
ROA 0371

FURTHER, deponent sayeth not.



Harvey M. Watson III

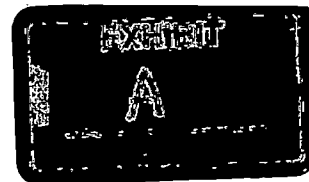
Sworn to before me this
12 day of May 2017.



Notary Public for South Carolina

My commission expires: 11-1-2023

ROA 0371



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.)

ACCEPTANCE OF SERVICE

The State of South Carolina, and The
South Carolina Department of
Corrections)

Defendant)

2017 FEB 27 AM 9:28
RICHLAND COUNTY
FILED
JENNIFER W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

Pursuant to Rule 4(j), SCRCP, the State of South Carolina, the Defendant in the above-captioned matter, by and through its undersigned agent who is authorized to accept service on its behalf, hereby acknowledges receipt of a copy of the Summons and Complaint filed in the above-captioned action.

The copy was received on 2-21, 2017 in Columbia, SC.

Ella Smart
Printed name: E. Smart
Authorized agent for acceptance of service

2-21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter

Plaintiff

vs.

The State of South Carolina and
South Carolina Department of
Corrections

Defendant

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-6916

AFFIDAVIT OF SERVICE

RICHLAND COUNTY
FILED
2017 MAR -1 PM 12:45
JEANNETTE W. HOBBS
C.C.P. & G.S.

I hereby certify that on February 28, 2017 at 4:00 a.m./p.m. the undersigned deponent, who being duly sworn, says that he served the following and that the deponent is not a party to this action:

- Filed Order of Joinder
- Filed Petition for Writ of Habeas Corpus

IN THE WITHIN ACTION BY DELIVERING COPIES THEREOF in the manner marked below:

() Individual Service:

Person Served: The Honorable Alan Wilson, Attorney General for The State of South Carolina

Address Served: 1000 Assembly Street Suite #501 Columbia, SC 29201

() Substitute Service: By Serving:

() Poster service: After attempting service on ___/___ at ___ and on ___/___ to a conspicuous place on the property described herein:

() Other service: As described in the comments below by serving _____ as _____

() Non service: For the reason detailed in the comments below.

COMMENTS:

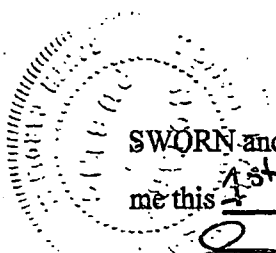
The undersigned swears that the above information is true and accurate.

(Process Server)

[Signature]

(Print Name)

Clarence Porter



SWORN and subscribed before
me this 1st day of March, 2017

[Signature]
Notary Public for South Carolina

My Commission Expires: 2-25-23

Beth Cogan

From: Clay Mitchell <CMitchell@scag.gov>
Sent: Thursday, March 23, 2017 9:47 AM
To: Desa Ballard
Cc: Mara Ballard; Beth Cogan; Damon Wlodarczyk; Beth Cogan; Mara Ballard
Subject: RE: Carpenter, Charles (habeas corpus)

AmicusFileIds: 1938
AmicusFileName: Carpenter, Charles (Civil)
AmicusId: 346922
AmicusStatus: Saved

We don't plan to file any other responses at this point. I'll be prepared to have the motion to dismiss heard and then go from there.

Clay

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Clay Mitchell
Cc: Mara Ballard; Beth Cogan; Damon Wlodarczyk; Beth Cogan; Mara Ballard
Subject: RE: Carpenter, Charles (habeas corpus)

Thank you. Are you not going to file an answer? Judge Toal is hearing the merits of the habeas petition on April 6th.

-----Original Message-----

From: Clay Mitchell [mailto:CMitchell@scag.gov]
Sent: Wednesday, March 22, 2017 5:36 PM
To: Desa Ballard <desab@desaballard.com>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Damon Wlodarczyk <damonW@rplfirm.com>
Subject: RE: Carpenter, Charles (habeas corpus)

Desa,

I've attached my Return and Motion to Dismiss that was sent out today. It looks like only Damon was mailed a physical copy, so I'll make sure we send out a hard copy to you tomorrow. Thanks.

Clay Mitchell
Assistant Attorney General

SC Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
PO Box 11549
Columbia, SC 29201

Office: (803)734-3693
CMitchell@scag.gov

ROA 0376

-----Original Message-----

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]
Sent: Tuesday, March 14, 2017 3:55 PM
To: Clay Mitchell; Desa Ballard
Cc: Mara Ballard; Beth Cogan
Subject: Re: Carpenter, Charles (habeas corpus)

Ok. Thanks

(sent from mobile device)

Damon C. Wlodarczyk
Attorney and Counselor at Law
Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Office: 803-799-9993
Facsimile: 803-239-1414
E-mail: damonw@rplfirm.com<mailto:damonw@rplfirm.com>
Web:

<https://na01.safelinks.protection.outlook.com/?url=www.rplfirm.com&data=02%7C01%7Cdesab%40desaballard.com%7C9d3e9fa74dae48a7ab6008d4716b7213%7C6b7ceb12d1f2465da7a745b658c1488e%7C0%7C0%7C636258158218185839&sdata=K%2BguJtn%2B2ZTPjmdOv4oB4Y6fal0INVuG2xm%2BnLfSBI4%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.rplfirm.com&data=02%7C01%7Cdesab%40desaballard.com%7C9d3e9fa74dae48a7ab6008d4716b7213%7C6b7ceb12d1f2465da7a745b658c1488e%7C0%7C0%7C636258158218185839&sdata=c4npZIRAvwiKNpgpBzuEwcuO1jOIHlmswldZn58WN4%3D&reserved=0>>

Confidential and Privileged

Unless otherwise indicated or obvious from its nature, the information contained in this communication is attorney-client privileged and confidential information/work product. If the reader of this communication is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies – electronic, paper or otherwise – which you may have of this communication.

On Tue, Mar 14, 2017 at 3:50 PM -0400, "Desa Ballard" <desab@desaballard.com<mailto:desab@desaballard.com>> wrote:

I received a call from Anne Henley at the clerk's office and she said that she had consulted with Judge Toal about this matter. Judge Toal told Anne that a status conference was not necessary and she would see us on April 6th for the hearing.

Please confirm receipt.

Thanks.

db

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter

Plaintiff

vs.

South Carolina Department of
Corrections, and State of South
Carolina

Defendant

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-6916

ORDER DENYING MOTIONS TO DISMISS

2017 APR 25 PM 1:30
RICHLAND COUNTY
JEREMY L. BROWN

#1
JST
Plaintiff Charles E. Carpenter (hereafter "Carpenter") is incarcerated at the South Carolina Department of Corrections (hereafter "SCDC"). He filed this action against SCDC for declaratory relief and also filed a Petition for Writ of Habeas Corpus. SCDC moved to dismiss, and Circuit Court Judge Casey Manning issued an order (filed on February 23, 2017) requiring the addition of the State of South Carolina as a defendant by serving the Attorney General (hereafter "the AG"). The AG thereafter filed a motion to dismiss, and both motions to dismiss were heard before me on April 6, 2017.

The motions to dismiss are both denied, for the reasons set forth herein, and this Court finds that jurisdiction to hear Carpenter's matter is vested in this Court, which is fully able to hear the merits of the matters presented. In light of the denial of them motions to dismiss, the defendants are given fifteen (15) to file answers to the complaint and petition.

The complaint, and exhibits attached, establish the following facts:

Carpenter entered a guilty plea to two (2) charges of violation of S.C. Code Ann. Section 44-53-370 on two indictments¹ in a plea agreement dated April 7, 1990. Pursuant to the plea

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).

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.

#2
JST
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
JST
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.

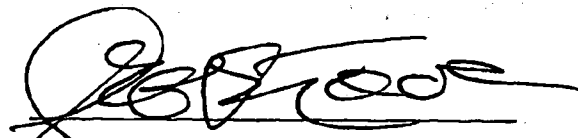
ACF
JST
As to PCR relief, that statutory procedure exists for purposes of challenging constitution violations related to the criminal conviction, and is not the exclusive method for challenging an unlawful sentence. See *e.g.* Williams v. Ozmint 380 S.C. 473, 671 S.E.2d 600 (2008). Declaratory relief 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).

45
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.

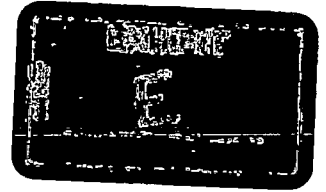

Jean H. Toal
Special Circuit Court Judge

April 19, 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.

From: Desa Ballard
To: Clay Mitchell; Harvey Watson
Cc: Mara Ballard; Beth Cogan
Subject: RE: Carpenter
Date: Friday, April 21, 2017 12:02:37 AM



Next Friday is fine. It won't interfere with the hearing date. Thanks

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Clay Mitchell <CMitchell@scag.gov>
Date: 4/20/17 8:41 PM (GMT-05:00)
To: Harvey Watson <harvey@desaballard.com>
Cc: Desa Ballard <desab@desaballard.com>, Mara Ballard <Mara@desaballard.com>, Beth Cogan <Beth@desaballard.com>
Subject: Re: Carpenter

It's due tomorrow if you count 15 days from the hearing before Judge Toal. But no order denying the MTD has been filed, so I'm not sure if I'd get 15 from the filing of the order or from the hearing. Either way I wanted to get it out tomorrow, and I'd ask for 5 days which will give me until Wednesday to file it. Since the hearing is set for next month this shouldn't cause any delay.

Thanks. Clay

From: Harvey Watson <harvey@desaballard.com>
Sent: Thursday, April 20, 2017 6:09:44 PM
To: Clay Mitchell
Cc: Desa Ballard; Mara Ballard; Beth Cogan
Subject: RE: Carpenter

Desa is out today and tomorrow, as you likely saw in an auto-reply. When's it due and how many days are you asking for exactly?

Harvey M. Watson III
Ballard & Watson, Attorneys at Law
P.O. Box 6338
West Columbia, SC 29171
P (803) 796-9299
F (803) 796-1066

From: Clay Mitchell [mailto:CMitchell@scag.gov]

ROA 0382

ROA 0383

Sent: Thursday, April 20, 2017 5:41 PM

To: Desa Ballard <desab@desaballard.com>

Cc: Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Harvey Watson <harvey@desaballard.com>

Subject: Carpenter

Desa,

Can you give me a few extra days to get an answer filed? I've had some other things come up that have taken up a lot of my time. I would appreciate it. Thanks.



Clay Mitchell
Assistant Attorney General

SC Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
PO Box 11549
Columbia, SC 29201

Office: (803)734-3693
CMitchell@scag.gov

ROA 0383

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, and State of South)

Carolina)

Defendant)

**MOTION FOR ENTRY OF DEFAULT
AGAINST THE STATE AND SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS AND FOR SUMMARY
JUDGMENT**

Plaintiff Charles Eugene Carpenter (hereafter "Carpenter") moves for entry of default against both defendants, based on their failure to timely file an answer to the complaint in this action and therefore, based on undisputed facts, moves for summary judgment on the legal issues presented by the Complaint and Petition for Writ of Habeas Corpus. In support of his motion, Carpenter would show:

1. Defendant State of South Carolina did not file an answer to the complaint for declaratory relief in this matter. *See* Affidavit of Default as to State of South Carolina filed herewith.
2. Defendant South Carolina Department of Corrections (SCDC) did not timely file an answer to the complaint for declaratory relief in this matter. *See* Affidavit of Default SCDC, filed herewith.

Wherefore, Carpenter moves for an order finding and determining that all factual allegations of the complaint in this matter are deemed to be admitted. Since all facts are admitted, there are no genuine issues of material fact and the matter should be determined on summary judgment.


Desa Ballard
Harvey M. Watson III
Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone: 803.796.9299
Facsimile: 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

May 12, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

State of South Carolina and South Carolina
Department of Corrections,

Defendants.

(Our File No.: 5021.01216)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**NOTICE OF MOTION
AND
DEFENDANT SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS'
MOTION TO DENY ENTRY OF
DEFAULT/SUMMARY JUDGMENT
OR IN THE ALTERNATIVE,
MOTION TO SET ASIDE WITH
LEAVE TO FILE**

ROA 0386

2017 MAY 15 PM 1:38
JANETTE W. COOPER
C.C.P. & C.S.
RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Department of Corrections ("SCDC"), by and through its undersigned counsel, do hereby move pursuant for an Order denying Plaintiff's Motion for Entry of Default or, in the alternative, for an Order allowing Defendant's Answer to be accepted out-of-time.

BACKGROUND

Plaintiff is currently confined in the Evans Correctional Institution of the South Carolina Department of Corrections. Plaintiff filed a Summons and Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus on November 18, 2016. Plaintiff immediately thereafter filed a Motion captioned Petition for Writ of Habeas Corpus (Expedited). Service of the documents were accepted by SCDC on November 23, 2016. On December 23, 2016, the undersigned filed and timely served a pre-Answer motion to dismiss the action. On February 16, 2017, Defendant filed and served a Memorandum in Opposition to Plaintiff's Petition.

Defendant's motion to dismiss was initially heard by Judge Casey Manning on February 16, 2017. Judge Manning issued an Order providing that the State of South

Carolina be made a party to the action for the purposes of defending the claim concerning Plaintiff's original sentences.

Plaintiff subsequently served a copy of the Amended Summons, Petition/Complaint and Judge Manning's Order on the State of South Carolina ("State"). On or about March 31, 2017, the State filed and timely served a Return and Motion to Dismiss. On April 6, 2017, a hearing was held before Judge Jean Toal on the motions to dismiss filed by the defendants. Judge Toal denied the motions orally. However, the written Order denying the motions was not filed until April 25, 2017, at which time a copy of the Order was e-mailed to counsel by the clerk's office. [Exhibit A]. The Order first provided that Defendants would have fifteen (15) days to file Answers, but the last sentence of the Order stated that Defendants would have fifteen (15) days from the date of the hearing (April 6, 2017) to file Answers and a merits hearing shall be scheduled immediately thereafter.

Contrary to the language in the Order, Plaintiff requested a merits hearing with the Chief Administrative Judge on April 11, 2017, which was noticed on April 19, 2017, prior to the Answer deadlines set forth in the Order or pursuant to Rule 12(a), SCRPC.

On April 28, 2017, the State filed and served an Amended Return. On May 10, 2017, Defendant filed and served its Answer and Motion to Bifurcate one (1) issue to be tried at a later date. On May 12, 2017, Plaintiff e-mailed a copy of his Motion for Entry of Default against defendants and motion for summary judgment.

ARGUMENT

I. THE MOTION FOR ENTRY OF DEFAULT SHOULD BE DENIED

A. Defendant's Answer was timely.

"A defendant has thirty days from the date of service of the complaint to serve his answer. Rule 12(a), SCRPC. A defendant's motion to dismiss stays the time for service of the answer until fifteen days after notice of the court's action." *Bowers v. Robinson*, 311 S.C. 412, 413-14, 429 S.E.2d 799, 800 (1993); Rule 12(a)(1), SCRPC; *see Beckham v. Durant*, 300 S.C. 329, 333, 387 S.E.2d 701, 704 (Ct. App. 1989) (restating Rule 12(a)(1), SCRPC that "if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action).

Rule 77(d), SCRPC, provides in part, "[i]mmediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every effected party who is not in default . . ." While a copy of the actual filed Order does not need to be delivered to trigger the notice required, "Rules 77(d), 5(a), and 12(a)(1) [SCRPC] [do] require service of notice of the entry of the order . . ." to trigger the fifteen (15) day time to respond. *Rosen, Rosen & Hagood v. Hiller*, 307 S.C. 331, 334, 415 S.E.2d 117, 118 (Ct. App. 1992)

First, Judge Toal did not state at the motion hearing that Defendants had fifteen (15) days from the date of the hearing versus fifteen (15) days from the date of receiving notice of the entry of her Order to file and serve their Answers. In fact, the undersigned initially sought confirmation after the motions were orally denied that Defendants would have fourteen (14) days to file their responses.¹ Accordingly, any oral ruling from the bench was not final until the Order was signed and filed with the Clerk of

¹ The undersigned's practice includes a significant amount of federal work and counsel erroneously referred the companion federal rule provides for fourteen (14) days instead of fifteen (15) days to file a responsive pleading after receiving notice of the court's action. Fed. R. Civ. P. 12(a)(4)(A).

Court. *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260-61 (Ct. App. 1999) (holding “[a]n order is not final until it is written and entered by the clerk of court”) citing *First Union National Bank of South Carolina v. Hitman, Inc.*, 306 S.C. 327, 411 S.E.2d 681 (Ct.App.1991), *aff’d*, 308 S.C. 421, 418 S.E.2d 545 (1992) (stating “[u]ntil an order is written and entered by the clerk of court, the judge retains discretion to change his mind and amend his ruling accordingly”). Therefore, the time for Defendants’ Answers to be filed could not have begun to run until Judge Toal’s written Order was entered with the clerk’s office on April 25, 2017. While the Order could have provided a different time in which to respond *after* counsel received notice of the entry of the Order, the Order could not require the defendants’ to Answer *before* the written Order was filed.² *Id.*

As notice of Judge Toal’s Order was provided on April 25, 2017, the Answers were due within fifteen (15) days from that date, or May 11, 2017.³ As evidenced by the Certificate of Service and Affidavit of Default, Defendant’s Answer was served on May 10, 2017. Therefore, the motion for entry of default should be denied.

B. Defendant is not in default.

Rule 12(a), SCRCP, provides in part that “[a] defendant shall serve his answer within 30 days after the service of the complaint upon him” Rule 55(a), SCRCP, provides that “[w]hen a party has failed to plead *or otherwise defend* as provided by these rules . . . the clerk shall enter his default upon the calendar (file book).” However, “[t]he

² Plaintiff contends that the Answers would be due April 21, 2017 (fifteen (15) days from the hearing date of April 6, 2017). However, the written Order was not filed and provided to counsel until April 25, 2017, four (4) days after the alleged due date.

³ The Answers would be due May 10, 2017, but May 10, 2017 was a recognized state holiday. *See* Rule 6(a), SCRCP (stating the last day of the period so computed is to be included, unless it is a . . . State or Federal holiday . . .).

words 'otherwise defend' refer to the interposition of various challenges to such matters as service, venue, and the sufficiency of the prior pleading, any of which might prevent a default if pursued in the absence of a responsive pleading." *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004) citing 10A Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2682, at 16-17 (3rd ed.1989).

In the present case, the evidence clearly demonstrates that the Defendant filed and timely served a pre-Answer motion to dismiss. Additionally, on February 16, 2017, Defendant filed and served a memorandum in opposition to the petition alleging in part that Defendant failed to exhaust his administrative remedies regarding the issue of sentence credits and that Plaintiff's due process rights were not violated by the adjustment in Plaintiff's max-out date to reflect the sentencing sheets. Accordingly, Defendant has timely appeared and otherwise defended this action long before the Answer was due and, therefore, Plaintiff's request for entry of default should be denied.

II. IN THE ALTERNATIVE, DEFENDANT SEEKS AN ORDER FROM THE COURT PURSUANT TO RULE 55(C), SCRCP SETTING ASIDE THE ENTRY OF DEFAULT AND ACCEPTING DEFENDANT'S ANSWER OUT-OF-TIME.

If the Court should find that Defendant's Answer was untimely, Defendant requests an Order setting aside the entry of default (if any) and accepting Defendant's Answer out-of-time.

"The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'" *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009) citing Rule 55(c), SCRCP.

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

Id.

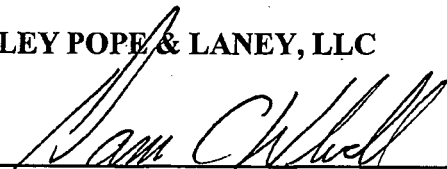
In the present case, the default, if any, resulted from the conflict between the deadlines provided in Rule 12(a)(1), SCRCP, the last sentence of Judge Toal's Order, and the date in which the Order was filed and notice given to the undersigned as more fully set forth above. The vacation of the entry of default (if any) would serve the interests of justice in that the citizens of the State of South Carolina should be protected by ensuring that inmates serve the sentences imposed by the courts as provided by state law. The motion is being made three (3) days after receiving the e-mailed motion and on the day of receiving the motion for entry of default by mail. The Defendant has meritorious defenses in that Plaintiff's sentences were day-for-day pursuant to the statutes in effect at the time of his sentences and that Plaintiff has not been denied due process. Plaintiff would suffer no prejudice as Defendant has been actively seeking dismissal of this case on procedural grounds as well as on the merits. Moreover, Plaintiff is still required to prove he is entitled to relief by evidence satisfactory to the court as this is an action against the State and its agency. *See* Rule 55(e), SCRCP.

As the Defendant has demonstrated good cause, if the Court finds that the entry of default was appropriate, which is denied, the Defendant requests an Order setting aside said entry and accepting Defendant's Answer filed and served on May 10, 2017 out-of-time.

CONCLUSION

For the foregoing reasons, Defendant South Carolina Department of Corrections respectfully requests an Order denying the motion for entry of default/summary judgment or, in the alternative, for an Order setting aside the entry of default (if any) and accepting Defendant's Answer filed on May 10, 2017, out-of-time.

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May 15, 2017

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, and State of South
Carolina)

Defendant)

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF RELIEF REQUESTED
INCLUDING WRIT OF HABEAS CORPUS**

Plaintiff Charles Eugene Carpenter (hereafter "Carpenter") submits the following support of his Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus.

Carpenter is an inmate in the custody of the South Carolina Department of Corrections ("SCDC"). This action asserts that he is being unlawfully detained because his lawful sentence has expired. Carpenter previously sought a writ of habeas corpus from the South Carolina Supreme Court. The Court denied the relief, holding that Carpenter's petition for a writ of habeas corpus could not be entertained unless or until "a decision in the prisoner's favor" would result in his release from incarceration. A copy of that decision is attached as **Exhibit 1** to Memo. This petition seeks that relief, the granting of which would result in a release.

Carpenter filed this expedited¹ action for declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 *et seq.* as well as a Petition for Writ of Habeas Corpus. Upon motion by SCDC, Circuit Court Judge Casey Manning ordered that the State of South Carolina be made a defendant. (Order of Judge Manning dated February 23, 2017). The Office of the Attorney General ("AG") was properly served with the pleadings (the complaint, an amended summons, Judge Manning's

¹ No order has been signed specifically designating the matter as expedited. However, Chief Administrative Judge Benjamin has been assisting with expediting the scheduling of matters.

order and the petition for writ of habeas corpus). See Affidavit of Service and Acceptance of Service on file.

Both Defendants filed Motions to Dismiss. Retired Chief Justice Jean Toal, sitting as a circuit court judge by designation, denied both Motions to Dismiss by order dated April 19, 2017. She ordered Defendants to file responses to both the Complaint and the Petition for Writ of Habeas Corpus. Both Defendants filed responses to the Petition for Writ of Habeas Corpus.² SCDC filed an Answer, but the Answer was filed and served well past the deadline provided by Justice Toal's order. The Office of the Attorney General has never filed an Answer.

Carpenter filed Motions for Entry of Default against both Defendants on May 12, 2017. SCDC filed a motion to permit its answer to be filed out of time. The AG has filed nothing in response to the motion for entry of default, presumably relying upon Rule 55(e), SCRPC.³ Carpenter agrees that in a declaratory judgment action, default by the State or an agency of the state only establishes the facts alleged as true, but the trial court still has to determine the application of law to the facts, per Rule 55(b), SCRPC. As a practical matter, the facts here are not in dispute, so the matter presents legal issues only.

SCDC has also filed a Motion to Bifurcate, asserting that it intends to call witnesses which would extend the length of the hearing, and which would not be necessary, according to SCDC, if the Court grants relief to Carpenter on the issues raised against the State of South Carolina (as opposed to SCDC). It is believed that motion is moot, as the case has been set for hearing on June

² The State's Amended Return to the Petition for Writ of Habeas Corpus continues to assert that this matter may not be brought in the circuit court, arguing that the matter must be brought in the original jurisdiction of the South Carolina Supreme Court. That argument, however, has already been rejected by Justice Toal's order denying the State's motion to dismiss.

³ Carpenter is informed and believes that no entry of default has been made.

6 and 7, 2017 for two hours each for the hearing of all matters presented by the pleadings in this case.

The grounds asserted for the relief requested by Carpenter fall into two (2) categories:

As against the State of South Carolina:

1. The trial judge lacked subject matter jurisdiction to impose an "enhanced" sentence on Indictment 97GS475001 after recessing court *sine die*.
2. The trial judge lacked subject matter jurisdiction to conduct a second "sentencing" hearing several months after sentencing, for the purpose of holding Carpenter in "contempt" of his plea agreement, and to take any action to change his sentences at that time.

As a result of the absence of jurisdiction to bifurcate the sentencing on the two indictments, this court should conclude that Carpenter's second sentence, on 90GS475002, entered on August 9, 1990, was entered without subject matter jurisdiction, leaving the only valid sentence binding Carpenter as the 25-year sentence entered on June 4, 1990. That sentence has expired.⁴ Carpenter is therefore being unlawfully detained.

As against SCDC:

1. SCDC violated Carpenter's rights to due process of law by unilaterally changing Carpenter's date of release from 2015 to 2040 without conducting a hearing and allowing him to participate.

⁴ Carpenter asserts that the 25-year sentence imposed on him on Indictment No. 90GS475002 expired in 2002, when the 25-year sentence for his co-defendant, Bobby Gene Horne, expired. See discussion *infra*. and Trial Exhibit F. (Trial exhibits will be submitted at trial on June 7, 2017).

2. SCDC violated Carpenter's rights to due process of law by awarding him credits for good time, education credits, and then removing them without notice to him
3. SCDC denied Carpenter equal protection, when another inmate sentenced under the same statute, the same year (and the same indictment) was given credits for good time, education and other statutory benefits which were denied to Carpenter; that inmate was released in 2001.

BACKGROUND

On April 7, 1990, Carpenter signed a plea agreement with the State, a copy of which is attached to the complaint as **Exhibit A**. The terms for that agreement provided, *inter alia*,

- (a) Carpenter would enter a plea of guilty to two counts of violating S.C. Code. Ann. Section 44-53-370(e), *i.e.*, trafficking in marijuana and cocaine.
- (b) Sentencing would be done pursuant to Section 44-53-370(e)(2) with regard to Count One of Indictment 90GS4705002;
- (c) Sentencing would be done pursuant to Section 44-53-370(e)(1)(d) with regard to Count One of Indictment 90GS4705001.
- (d) The State will recommend that the Court impose a total sentence of 25 years.
- (e) Carpenter would provide information to the State and cooperate in investigations.
- (f) If the State's obligations under the plea agreement become "null and void... the State may argue for a maximum sentence for the offenses to which [Carpenter] pled guilty"
- (g) "The Attorneys for the State agree to recommend that any sentences of incarceration of the Defendant, Charles Eugene Carpenter... receives as a result of these pleas shall be concurrent terms of incarceration, and that the Defendant has no right to withdraw his plea, with the further understanding that should the Defendant fail to fulfill the terms of this agreement, then the State may recommend that any sentence be run consecutive, each Count to the other."

- (h) "The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statement of the parties, that this Agreement may be modified only in writing and signed by all parties, except as to the matters placed on the record in open court on April 7, 1990, and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void."

Lack of Subject Matter Jurisdiction to Bifurcate Sentencing

Judge Edward W. Cottingham was apparently assigned to hold circuit court in Chesterfield County for the week of April 9, 1990.⁵ See **Exhibit B** to complaint. The State asserts that Judge Cottingham's authority to accept the guilty plea and sentence arose by virtue of an order of Chief Justice George Gregory entered on November 15, 1989, which it to referenced in footnote 5 of its Return. That order vested jurisdiction in Judge Cottingham to "dispose of all matters... arising from State Grand Jury Investigation No. 89-005." Nothing in Carpenter's plea or sentence indicate his plea arose out of that investigation. Moreover, as set forth herein, that order can do nothing to affect the assignments by the Chief Justice of individual terms of court and the limited jurisdiction which accompanies each circuit judge's assignment to that term of court.⁶

The State cites to a section of the statewide grand jury statutes, specifically S.C. Code Ann. § 14-7-1630(B), which relates only to the establishment and operating of the statewide grand jury; the statute does not speak to the individual terms of court assigned by the Chief Justice. That section merely identifies the duties of the presiding judge of the statewide grand jury. Nothing in

⁵ Carpenter's counsel has attempted to locate court assignment orders for 1990 through Court Administration, but is informed and believes those records no longer exist.

⁶ The State's argument is so broad as to be absurd. Accepting the State's argument would lead to a conclusion that Judge Cottingham never lost jurisdiction over any of the proceedings that arose from the grand jury proceedings. Presumably, under the State's argument, Judge Cottingham could reconvene a hearing today and conduct proceedings on Indictments 90GS4705001 and 5002. The Supreme Court has rejects arguments that result in an "absurd result" and such arguments are therefore not persuasive. Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007).

the statutes regarding the state wide grand jury or otherwise supersedes the constitutional authority of the South Carolina Supreme Court to assign judges as necessary to carry on the business of the courts of general sessions. S.C. Const. art. V, 4. Nor could the statutes attempt to usurp the authority of the Supreme Court and the Chief Justice to assign judges under its exclusive right to do so. A statute which attempted to do so would violate the separation of powers doctrine. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) (invalidating the statutory procedure which purported to vest in circuit solicitors with authority to control the docket in general sessions court, as violate of the separation of powers doctrine).

The statewide grand jury was born from legislation enacted in 1987, which went into effect in February 1989, when Article I, Section 11 and Article V Section 22 of the South Carolina Constitution were amended to accommodate the establishment of the statewide grand jury. 1987 Act No. 150. The statewide grand jury process as in its infancy at the time Carpenter's pleas were taken and procedures were unclear.

The State is correct that the South Carolina Supreme Court has had to issue a series of Administrative Orders to create procedure for the handling of cases which arise from indictments of the statewide grand jury. The State cites to a 2003 Administrative Order of the Chief Justice which the State claims "were the procedures in place at the time" and the State may be correct on that point. (Fn. 5 of State's Return). The Chief Justices have issued Administrative orders promulgating the procedures for the statewide grand jury proceedings since its inception. See 2000-12-07-01, which states, *inter alia*, that "it has been necessary for the Supreme Court... to set out through administrative orders certain duties and responsibilities" governing the statewide grand jury.

Administrative Order 2000-1207-01 spelled out a procedure for assigning judges to hear cases following the return of indictments by the state wide grand jury that is identical to the one set forth in the 2003 Administrative Order cited by the State. However, no published orders appear prior to the 2000 order, so the actual procedure that was in place in 1990 is unknown. The procedure, however, is irrelevant; what is relevant is the jurisdiction of the sentencing.

The Chief Justice's authority to assign circuit judges for individual terms of court has remained unchanged at least since the last amendment to Article V, Section 4 of the South Carolina Constitution via 1985 Act 9. Article V, Section vests the Chief Justice with exclusive authority to "set the terms of court and... assign any judge" to preside over that term. Therefore, the "term of court" analysis set forth in State v. Campbell and its progeny, discussed *infra.*, is the applicable and controlling law in this case, notwithstanding any subsequent orders that may have been issued regarding statewide grand jury proceedings and/or any statutory amendments.

The 1989 order appointing Judge Cottingham to "dispose" of certain cases arising out of a particular grand jury did nothing more than appoint Judge Cottingham authority to preside over certain pretrial, preindictment, and trial matters. It did nothing to usurp the Chief Justice's exclusive authority to assign circuit court judges over individual terms of court. Article V, Section 4, South Carolina Constitution, or to affect the jurisdiction afforded by an assignment of an individual circuit court judge to a particular term of court, and the resulting effects of adjournment *sine die*.

Even if the 1989 order gave Judge Cottingham jurisdiction to take Carpenter's plea and sentence him, it did nothing to invalidate the long-standing rule that a trial judge loses jurisdiction over a particular criminal matter when the term of court adjourns *sine die*. State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008), *infra*.

Carpenter's plea related to charges in two indictments, 97GS4705001 and 97GS4705002, both of which were included in the plea agreement that is **Exhibit A** to Carpenter's complaint. As set forth in detail in the complaint, Judge Cottingham accepted Carpenter's plea to both indictments on April 7, 1990, and deferred sentencing to June 4, 1990. Judge Cottingham's authority to impose or affect Carpenter's sentence concluded at the adjournment *sine die* of the term of General Sessions court which began June 7, 1990.⁷ Each week of court is a separate term. State v. Mixon, 275 S.C. 575, 274 S.E.2d 406 (1981), cited with approval in State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2012).

April 7, 1990

Carpenter entered his plea on April 7, 1990. **Complaint Exhibit B**. At the time Carpenter's plea, Judge Cottingham stated "Now, I tell you that this Court will abide by this plea agreement. I tell you that upon the record." **Complaint Exhibit B** (Tr. page 10, lines 19 – 20). Judge Cottingham also stated "If I conclude upon proper presentation that you have not [cooperated with law enforcement], then this plea agreement to you and to me is void and of no effect." **Exhibit B to Complaint** (Tr. page 11, lines 4-6).

In Judge Cottingham's colloquy with counsel, he stated "And as I understand it the understanding is it is 25 years concurrent?" and the reply was "yes." **Exhibit B to Complaint** (Tr. page 13, lines 5-7).

Prior to entry of the plea, the prosecutor stated "If I could also ask that the Defendant understand that this is a mandatory term of imprisonment, that it is a mandatory minimum, the sentence cannot be suspended, probation can't be granted and it is a sentence that does not have

⁷ June 4, 1990 was a Monday.

eligibility for parole until the passage of 25 years.” Carpenter’s counsel indicated Carpenter’s understanding of that term as part of the plea. **Exhibit B to Complaint** (Tr. page 20, lines 1-7).

Judge Cottingham concluded the entry of the plea by stating that “I am going to abide by the plea agreement. [Carpenter] is entitled to that, and I will do that.” *Id.* at lines 14-15. Because Judge Cottingham did not impose any sentences on April 7, 1990, he retained jurisdiction to impose sentences at a later date. State v. Campbell, *supra*. “It is a long standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment⁸ was entered expires.” 656 S.E.2d at 373.

June 4, 1990

Sentencing proceedings reconvened on June 4, 1990. See **Exhibit C to Complaint**. At the time of sentencing, the State advised the Court that Carpenter “has not been conforming to the terms of the agreement.” *Id.* at Tr. page 9, lines 6-8.

At the June 4, 1990 sentencing, Judge Cottingham stated:

[I]t is my intention to comply exactly with the terms of the plea agreement. In doing so, however, I would require the Defendant to do the exact same thing. Now the question has been raised as to whether or not he has in effect complied. If he has, of course, I am going to sentence him to the minimum 25 years concurrent... If he has not, then I will deal with him accordingly and I would change his sentence to speak to his lack of cooperation.

Exhibit C to Complaint. (Tr. page 10, lines 16-24) (emphasis added).

⁸ Judgement was not entered on April 7, 1990, because while the plea was accepted, no sentence was imposed. Judgment was entered on June 4, 1990. See discussion *infra*. The South Carolina Supreme Court has recognized that the “typical procedure” is the defendant pleads guilty pursuant to a plea agreement and then sentencing is held in abeyance until after the defendant has cooperated at the co-defendant’s trial.” State v. Campbell, *supra*, 656 S.E.2d at 373-374.

Upon inquiry by Carpenter's counsel, Judge Cottingham stated that he was going to decide whether to sentence Carpenter on both indictments after hearing from the State, and

if... there exists probable cause to hold a hearing as to whether or not he has in effect complied with this hearing [*sic*], I am going to sentence him on one Count, cocaine. I am going to sentence him exactly according to the plea agreement. I then later will hold a hearing as to whether or not he has complied with his plea agreement... If I conclude from that hearing that he did, in effect, comply, I will make any sentence on that charge, which is the trafficking in marijuana, concurrent with what I do today. If I conclude that he has not complied with the plea agreement, then I will impose such additional sentence as I think is appropriate under the circumstances.

Exhibit C to complaint. (Tr. page 11, line 13 – p. 12, line 3) (emphasis added).

The State asked the trial judge to “enforce the terms of the plea agreement by requiring or imposing a consecutive sentence” upon Carpenter. **Exhibit C to Complaint.** (Tr. p. 11, lines 13-16). Carpenter's counsel objected to the bifurcation of sentencing. *Id.* at p. 16, lines 16-25. Counsel's position was that the entire sentencing under the plea agreement had to be done at the same time. *Id.* at p. 19, line 20 – p. 20, line 1.

Judge Cottingham executed the sentencing sheet for Case 90GS475002 on June 4, 1990. **Exhibit D to Complaint.** He then recessed, to reconvene at a later date. However, the term of court at which the sentence was imposed pursuant to the plea agreement adjourned *sine die*.

On information and belief, the trial judge did not have authority to unilaterally bifurcate the sentencing proceeding, to assume continuing jurisdiction to adjudicate Carpenter's compliance with the plea agreement for purposes of enhancing his sentence, to delay sentencing on the second plea which was then before him for sentencing, or to do so without granting Carpenter a jury trial for the purpose of determining whether Carpenter complied with the plea agreement. The trial judge's actions deprived Carpenter of due process of law.

It is well settled that a trial judge loses authority to change a sentence in a criminal matter after the term of court adjourns *sine die*. State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008). Campbell is startlingly similar to this case. In that case, the Defendant was sentenced pursuant to a plea agreement. After a trial in a related matter, at which Campbell allegedly did not comply with the plea agreement's requirement to cooperate, the State made a motion to vacate Campbell's plea agreement and sentence. The sentencing judge scheduled a hearing, vacated the earlier sentence, and re-sentenced Campbell to life in prison. The Supreme Court⁹ vacated the life sentence, determining that the trial judge lacked the authority to reconvene the proceeding and change Campbell's sentence.

The ruling in Campbell, confirming that the trial judge's subject jurisdiction is lost at the end of the term has recently been reaffirmed. Tant v. State, 408 S.C. 334, 769 S.E.2d 398 (2014), citing to Campbell. In Campbell, the Supreme Court said that the trial judge's authority in a particular criminal matter ends at the end of a term of court, but that the lack of authority was not an issue related to subject matter jurisdiction. The Supreme Court's reliance for that declaration was State v. Gentry, 363 S.C. 93, 610 S.E.2d 594 (2005). However, the Gentry decision construed subject matter jurisdiction issues with respect to a defective indictment and overruled prior decisions that had held that a defective indictment deprived the trial court of subject matter jurisdiction. The discussion regarding subject matter jurisdiction in Campbell was not necessary to the Supreme Court's decision as to sentencing after adjournment *sine die* (because Campbell's matter was a direct appeal) and is therefore dicta. Carpenter asserts that, if a trial judge loses authority to act in particular criminal matter after adjournment *sine die*, the trial judge lacks

⁹ Campbell's appeal was filed with the Court of Appeals, and the Supreme Court certified the case for its own consideration pursuant to Rule 204(b), SCACR. *Id.*

jurisdiction over that particular matter. As confirmed by the Supreme Court in Tant, lack of "authority" over a particular criminal matter equates to subject matter jurisdiction in that particular matter.

Discussion on the record at the June 4, 1990 sentencing made clear that the sentencing judge was going to, *sua sponte*, conduct a factual hearing on a later date on new matters that were not embraced by the pleas already entered (and which were not the subject of further charges, arrests or indictment) at a later date to determine whether he, under his erroneously continued jurisdiction, would choose to adjudicate facts, without a jury trial to determine whether to sentence Carpenter on the second indictment to a concurrent term or a consecutive term. See **Exhibit C to Complaint** (Tr. p. 24, line 6 – p. 27, line 3).

Carpenter was, in fact, sentenced to 25 years in prison on June 4, 1990 on Count One of Case No. 990-GS-47-5001. See **Exhibit D to Complaint**, a sentence sheet executed that date. It is not known whether the sentencing sheet was executed before, during or after, the in-court proceedings on that date. It is also not known whether a sentencing sheet for the second charge, 90GS475001 was executed on that date.

August 9, 1990

Judge Cottingham convened a second sentencing hearing, without jurisdiction to do so, on August 9, 1990. See **Exhibit E to Complaint**, a copy of the transcript of that hearing. Carpenter again objected to the second hearing, renewing an earlier objection made in June, all of which was acknowledged by the Court. **Exhibit E to Complaint** (Tr. p. 4, lines 18-24).

The trial judge characterized the proceedings which were occurring as a hearing on "contempt in disobedience of the plea agreement." **Exhibit E to Complaint**. (Tr. p. 144, lines 22-

24). He also characterized the inquiry which was occurring as a determination of whether Carpenter had "breached his agreement." *Id.* (Tr. p. 144, lines 14 - 25).

Without a criminal charge pending against Carpenter, without advising Carpenter of his rights to a jury trial or other constitutional protections, and notwithstanding the existence of his plea already having been entered and accepted and a sentencing hearing already concluded, the trial judge proceeded to take testimony from witnesses to determine whether Carpenter had complied with his obligations under the plea agreement.

Carpenter's Counsel objected and correctly pointed out that there were no additional charges brought against Carpenter, and the evidence to be presented had to do with matters which occurred after the plea agreement had been entered and accepted, and therefore were not properly up for consideration.¹⁰

The Court took testimony from multiple witnesses for the State¹¹, much of which was conclusory, prejudicial, and not supported by any documentary evidence. Much of the testimony came from agents of the State summarizing their investigations into Carpenter's activities and inferring that Carpenter was threatening witnesses and speculating about assets that Carpenter may have derived from illegal activity, and generally postulating about their entire investigation.

After hearing from the witnesses, the trial judge said "There has not been made, before me, a single showing of additional cooperation by [Carpenter] since the plea agreement was entered

¹⁰ Carpenter's counsel astutely observed "There is a clean way for the State to accomplish what they're attempting to do. This is a muddy way, but I guess they're entitled to proceed whichever way they want to proceed." Exhibit D at page 10, lines 9-13.

¹¹ Exhibit E includes the testimony of Eddie Gordon of the "Governor's Raid Team" (p. 15); Ricky Lynn Johnson, a co-defendant (p. 85); Dorthea Galloway of the "Governor's Raid Team" (p. 93); Robert Kent Hoover, a co-defendant (p. 98); Kenny Ray Taylor, a co-defendant (p. 104); and Joseph Earl Smith, a co-defendant (p. 111) for the State. Carpenter's counsel called one witness, Bobby Gene Horne, a co-defendant. (p. 116).

into. Nobody has come forward and said, Judge, he cooperated, he did this, that, and the other. There's not one single incident today before me where, and according to that plea agreement, he has done anything." **Exhibit E to Complaint.** (Tr. p. 134, lines 12 – 19).

The trial judge continued "I'm inclined to think he knows who [an unidentified alleged co-conspirator] is... I'm not asking him to disclose that to me, but, you know... [I] was born at night but not last night." **Complaint Exhibit E** (Tr. p. 136, lines 19-25).

The trial judge continued "I may be wrong, but I really conclude that... Carpenter has absolutely, is absolutely thumbing his nose at the Court and to the State of South Carolina..."

Complaint Exhibit E (Tr. p. 138, lines 10-13). The trial judge continued:

This Defendant pled guilty to serious charges, trafficking in cocaine and marijuana. Of course, I've been the presiding judge over this whole grand jury indictment and I've got a feel now, based on the pleadings and what I have heard now, for what occurred and who did what. There's no question about it, that this man was the key man at the top of the whole organization. It's clear¹². If anybody in the world has got information about who did what, it's him.... I've got to conclude that he failed to cooperate.

Complaint Exhibit E (Tr. P. 139, lines 16-24; p. 140, line 2).¹³

The trial judge concluded:

I find beyond absolutely any doubt in my mind that the State of South Carolina has lived up to their agreement in every respect. I further find that he has failed to do so. And based on the plea agreement, I'm going to, one, leave the first part of the

¹² The Fourth Circuit Court of Appeals has noted that there would be "manifest impropriety in permitting the government, without satisfying a judge that the evidence proves that a defendant broke his promise, to escape the obligation the government undertook in the plea bargain. *United States v. Simmons*, 537 S.E.2d 1260 (4th Cir. 1976). By openly declaring his knowledge from other cases as support for his decision to find that Carpenter has not complied with the plea agreement, the trial judge effectively allowed the government to determine whether Carpenter had complied with the agreement.

¹³ The trial judge's disdain and even contempt for Carpenter was apparent on the record. "I've heard enough, and I could be right or wrong, but I think I'm right in the thing. I think that he's using the system and he continues to attempt to use the system... he hired you at the last possible minute, and then made a horrendous allegation against one of our most outstanding lawyers in the State of South Carolina." **Complaint Exhibit E** (Tr p. 140, lines 11 – 24).

sentence, on the number two indictment, as it was. . . And I find he's failed to cooperate in this one. And I find he's failed to cooperate with the terms of the agreement. I further find that an enhancement of the sentence is proper under the circumstances and that connection with regards to the indictment for trafficking in marijuana, it is the sentence of this court that he be confined for a period of twenty-five (25) years, consecutive to the sentence previously imposed upon the indictment for trafficking in cocaine.

Complaint Exhibit E (Tr. P. 141, lines 2 – 25).

In his statement as to why he was electing to sentence Carpenter to 25 years consecutive on Indictment No. 90GS47-05001, the trial judge made several statements that suggested he had already sentenced Carpenter to concurrent sentences in accordance with the plea agreement. He determined that he would leave "the first part" of the sentence intact but that he was "enhancing" the sentence on the second indictment. **Complaint Exhibit E** (Tr. P. 141, lines 2 – 25). No sentencing sheet on 97GS4705001 from the June 4, 1990 proceeding has been found. But the trial judge's statements on August 9, 1990 make clear that he thought he was enhancing a sentence that had already been imposed, apparently on June 4, 1990 when the sentence on '97GS47-5002 was imposed.

The trial judge made no determination of the burden of proof or persuasion to which he subjected the evidence he considered, or the weight of the evidence that he relied upon to declare that Carpenter's sentence should be "enhanced." He did state that he found the testimony of one of the State's witnesses to be "viable." **Complaint Exhibit E** (Tr. p. 144, line 12).

The trial judge even conceded that he may not have jurisdiction to bifurcate the sentencing and proceed as he did on August 9, 1990 when he imposed a consecutive 25-year sentence. He 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." **Complaint Exhibit E** (Tr. p. 141, line 21 – p. 142, line 1).¹⁴

Despite acknowledging that his jurisdiction had likely ended, the trial judge conducted the hearing and then ultimately concluded "I'm just leaving an avenue open in the event he demonstrates to you, to the extent that you [the State] wants to make a motion for me to reconsider this hearing and I'll do it, but I'll do it within thirty days. **Complaint Exhibit E** (Tr. p. 143, lines 2 – 6).

The trial judge reiterated "Now, let me get this clear. The hearing is now over." **Complaint Exhibit E** (Tr. p. 145, lines 6-8). "I've made a ruling. I'm gone [sic] stand by it. And I'm not gonna re-open that." *Id.* (Tr. p. 145, lines 18-19). But despite repeated claims he would not reopen the hearing,¹⁵ the judge continued to allow for reconsideration of the consecutive nature of the sentence imposed if the State, not Carpenter, requested the reconsideration be made. *Id.* (Tr. p. 146, lines 1 – 6).

In concluding the August 9, 1990 hearing, the trial judge sentenced Carpenter on Case No. 1990-GS-47-05001 to a fine of \$50,000 and a term of 25 years, consecutive to the sentence earlier entered on Case No. 1990GS-47-05002. **Complaint Exhibit F**.

Based on the foregoing, Carpenter seeks a writ of habeas corpus requiring his release from custody, as well as a declaratory judgment finding and order declaring the following:

¹⁴ The trial judge stated that "ordinarily, in general sessions court, after the term ends, but nobody knows when the term of the grand jury ends." (**Complaint Exhibit E**, Tr. p. 142, lines 19-21). The trial judge may have been arguing that he had continuing jurisdiction, not as a general sessions judge, but as the judge who was presiding over the grand jury, to leave open the sentencing and make an evidentiary ruling that permitted him to "enhance" the sentence.

¹⁵ "I don't want to do anything to open up this hearing again and I'm not gone [sic] beat a dead horse to death." **Complaint Exhibit E** (Tr. p. 146, lines 9-11).

- (a) The trial judge lacked jurisdiction to bifurcate the sentencing proceeding, and therefore lacked jurisdiction to reconvene the sentencing proceeding and impose a consecutive sentence of 25 years (Case No. 1990-GS-47-05001) on August 9, 1990. The trial judge's jurisdiction concluded with the *sine die* adjournment during the term of General Sessions which was held the week of June 4, 1990. Similarly, the trial judge lacked subject matter jurisdiction to change Carpenter's sentence on 90GS475002 to a concurrent sentence on August 9, 1990.
- (b) The trial judge and/or the State violated Carpenter's due process rights when they tried Carpenter on charges that had not been brought against him and *sua sponte* took testimony and found Carpenter guilty of violating the plea agreement, when no additional charges had been brought and that matter was not before the court.
- (c) The trial judge and/or the State violated Carpenter's constitutional rights in that they failed to advise Carpenter of his right to a jury trial on the issue of whether Carpenter had complied with the plea agreement, especially when Carpenter had not been charged with an additional criminal offense related to the plea agreement.
- (d) The trial judge and/or the State violated Carpenter's constitutional rights when the court imposed an "enhanced" sentence on Carpenter on Case No. 1990-GS-47-05001 based on conduct that occurred after the plea had been entered and accepted and was unrelated to the offense to which Carpenter pleaded.
- (e) The trial judge violated Carpenter's constitutional rights when he openly permitted the knowledge he had gained as the presiding judge for the Grand Jury (much of which was unknown to Carpenter) to be considered in determining a sentence for Carpenter on Case No. 1990-GS-47-05001.

- (f) The sentence imposed on Case No. 1990-GS-47-05001 was illegal and should be vacated, and Carpenter should immediately be released from custody by SCDC.

DUE PROCESS VIOLATIONS BY THE DEPARTMENT OF CORRECTIONS

Upon his remand to the custody of SCDC in 1991, the SCDC determined Carpenter's sentence to be a total of 50 years, and it recorded in Carpenter's "Conviction Summary" that Carpenter's "max-out" or projected release date on 1990-GS-47-5001 was October 4, 2003, while his "max-out" date on 1990-GS-47-5002 was November 23, 2016. **Complaint Exhibit G.**

From that time forward, Carpenter's published max-out dates fluctuated between dates in which the recalculation was documented. To wit:

- (a) As of June 2, 1993, Carpenter's Program Status Review from SCDC reflected a projected "max-out" date of July 7, 2015. **Complaint Exhibit H.**
- (b) As of May 26, 1993, Carpenter's Offender Summary reflected a projected "max-out" date of July 7, 2015. **Complaint Exhibit I.**
- (c) As of January 20, 1995, Carpenter's Offender Summary reflected a work release eligibility projection of February 6, 2015 and a projected "max-out" date of April 4, 2017. **Complaint Exhibit J.¹⁶**

¹⁶ The records do not reflect any disciplinary action or other adjudicated extension of Carpenter's projected "max-out" date from July 7, 2015 to April 4, 2017. Carpenter was not notified of a change in this calculation or basis therefore.

- (d) As of March 30, 1995, Carpenter's Offender Summary reflected a work release eligibility projection of July 4, 2017 and a projected "max-out" date of December 4, 2019. **Complaint Exhibit K.**¹⁷
- (e) As of June 22, 1999, Carpenter's Offender Summary reflected a projected "max-out" date of July 4, 2019. No work release eligibility was shown. **Complaint Exhibit L.**¹⁸
- (f) As of March 28, 2002, Carpenter's Offender Summary reflected a projected "max-out" date of November 7, 2016. **Complaint Exhibit M.**¹⁹
- (g) As of May 16, 2005, Carpenter's Offender Summary reflected a projected "max-out" date of November 7, 2016. **Complaint Exhibit N.**
- (h) As of January 17, 2008, Carpenter's Offender Summary reflected a projected "max-out" date of February 7, 2018. **Complaint Exhibit O.**²⁰
- (i) As of June 28, 2010, Carpenter's Offender Summary reflected a projected "max-out" date of May 20, 2016. **Complaint Exhibit P.**²¹

¹⁷ There is no explanation provided in the SCDC records for the acceleration in Carpenter's projected "max-out" date as compared to the date shown previously on January 2, 1995 records. Carpenter was not notified of the change in this calculation or basis therefore.

¹⁸ Again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on March 30, 1995 records. Carpenter was not notified of the change in this calculation or basis therefore.

¹⁹ There is no explanation provided in the SCDC records for the acceleration in Carpenter's projected "max-out" date as compared to the date shown previously on June 22, 1999 records. Carpenter was not notified of the change in this calculation or basis therefore.

²⁰ Again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on May 16, 2005 records. Carpenter was not notified of the change in this calculation or basis therefore.

²¹ Once again, there is no explanation provided in SCDC records for the extension of Carpenter's projected "max-out" date from the date shown previously on January 17, 2008 records. Carpenter was not notified of the change in this calculation or basis therefore.

- (j) As of June 24, 2011, Carpenter's Offender Summary reflected the same sentence, with a projected "max-out" date of April 7, 2040. **Complaint Exhibit Q.**²²

On September 12, 2011, after learning that his sentence had been increased by 24 years, Carpenter contacted SCDC classification officials and inquired into the matter. Carpenter received a written response on December 2, 2011 from an employee of SCDC that stated, "Your sentence was modified to show as 25 yr. mandatory minimum day-for-day sentence on 6/24/11." **Complaint Exhibit R.**

SCDC records reflect, however, that the day before the modification of Carpenter's sentence and increase by 24 years, an internal transaction was undertaken at SCDC to "give" Carpenter 57 days credit on his newly-modified sentence for time he had served prior to conviction, before transfer into the custody of SCDC. **Complaint Exhibit S.** Carpenter has repeatedly attempted to address the unilateral change in his sentence internally and the Department of Corrections has offered explanations for why his sentence was unilaterally increased without notice to Carpenter or an opportunity to be heard.

Staff at SCDC has attempted to justify its change in Carpenter's sentence, which was made more than 20 years after he was taken into Department custody. **Complaint Exhibits T and U.** However, SCDC has never acknowledged the illegality of its change to Carpenter's sentence.

Upon request by Carpenter's Counsel of a copy of Carpenter's SCDC file, SCDC produced documents that showed exactly how, why and when SCDC changed Carpenter's max-out date to 2040. In 2010, an inmate named Carlos Gonzales wrote a letter to Chief Justice Toal, asserting that he was being illegally held because his sentence had expired. **Trial Exhibit 1.** Upon receipt

²² In response to record requests prior to the initiation of this suit, the Department of Corrections has not produced any Offender Summaries related to Carpenter dated for after 2011.

of Gonzales' letter, the clerk of the Supreme Court sent the letter to Jon Ozmint, who was then the director of SCDC. *Id.*

Upon receipt of Gonzales' letter, SCDC began an internal audit of all "inmates with a drug trafficking offense prior to 1/1/96 with an incarceration sentence of 25 years or more" who were still in the custody of SCDC as of March 18, 2010. **Trial Exhibit 2.** Carpenter was among those inmates. **Trial Exhibit 2, pp. 3623, 3635 and 3675.** In its "Drug Trafficking Audit Results" SCDC produced a listing of inmates whose sentences had been examined in response to Gonzales' letter. **Trial Exhibit 2, pp. 3675 and 4977.** According to SCDC's own records, the 2010 survey resulted in its unilateral decision to "update" Carpenter's sentence to a "mandatory minimum." Several other inmates, in addition to Carpenter, had their sentences "updated" to a mandatory minimum. *Id.*

SCDC's audit results reflected an incredibly disparate treatment of the inmates whose sentences were "audited." Some had already been "deemed parolable" so nothing was done to change those sentences. **Trial Exhibit 2, p. 3675, Inmates 138725, 141971.** One inmate died during the audit. *Id.* Inmate 126120. The inmate whose inquiry started the audit, Carlos Gonzales, also had his sentence changed by SCDC, oddly, prior to the audit. His sentence was apparently "updated to mandatory minimum prior to audit." *Id.* Inmate No. 217075²³.

This decision, an action, by SCDC, to unilaterally change Carpenter's sentence (not just his max-out date), without notice to him and without giving him a chance to object to the increased sentence, is a clear violation of Carpenter's constitutional rights. Tant v. State, 408 S.C. 334, 759 S.E.2d 398 (2014). "There can be no doubt the length of an inmate's incarceration implicates a

²³ According to SCDC's online inmate locator, Mr. Gonzales remains incarcerated.

constitutional liberty interest.” *Id.* at 401, citing Greenholtz v. Inmates Of Neb. Penal & Corre. Complex, 442 U.S. 1, 18, 99 S.Ct. 2100, 60 L.Ed. 668 (1979) (“Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary government action.”).

In addressing this issue in Tant, the South Carolina Supreme Court said:

We fully appreciate the Department’s duty to correct mistakes that may occur in recording an inmate’s sentence and are cognizant of the fact that in some instances the Department’s correction will resolve nothing more than a clear clerical error. However, we cannot ignore the reality that an individual’s freedom is implicated in these determinations. . . . We therefore hold whenever the Department 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, *Id.*, 759 S.E.2d at 401 (emphasis added).

Upon learning of the change in his sentence, Carpenter initiated internal grievances to challenge the change in his sentence. In a memorandum to Mr. Carpenter dated December 21, 2012, a staff member acknowledged that Carpenter’s sentence had been changed as a result of the 2011 audit. **Trial Exhibit C.**

Mr. Carpenter retained a prior attorney in 2015 to look into the matter. In responding to Mr. Carpenter’s prior attorney (Jon Ozmint), SCDC not only expressly admitted its 2011 change to the sentence in response to the Gonzales audit, it also admitted it has earlier “updated” Mr. Carpenter’s sentence in 1997 “per the drug statute to show that is was non parolable.” **Trial Exhibit D.** The 1997 change, not previously known, was clearly improper and constituted yet another violation of Carpenter’s rights. Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (2016).

In addition to its outright changes to Carpenter's sentence, SCDC also violated Carpenter's due process rights when it (again) unilaterally removed good time and work credits that he had already earned from his record. In Carpenter's 1993 offender summary (**Complaint Exhibit I**), SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." *Id.* at p. GC391. A presumably later, but undated Offender Summary produced by SCDC reflects no good time or work credits, but does reflect that Carpenter will become eligible for work release on February 6, 2015. **Complaint Exhibit J** p. GC460.²⁴ It is unclear (at least from records produced) when SCDC unilaterally removed Carpenter's work and good time credits. Yet again, SCDC violated Carpenter's due process rights by taking away earned credits.

SCDC cannot remove earned credits from an inmate's record once they have been earned. Furtick v. South Carolina Department of Corrections, 374 SC. 334, 549 S.E.2d 35 (2007). "The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to insure the state created right was not arbitrarily abrogated." *Id.* 649 S.E.2d 37. In Furtick, the South Carolina Supreme Court quoted from Superintendent, Mass..Corr.Inst. v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) to state "[w]here a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus, the inmate has a strong liberty interest in assuring the loss of good time credits is not imposed arbitrarily."

²⁴ This Offender Summary reflects that Carpenter's "max-out" date is "04/07/2017."

SCDC has thus violated Carpenter's constitutional rights in three ways about which we know: (1) changing his sentence unilaterally to change his max-out date from 2015 to 2040; (2) changing his sentence from parolable to non-parolable in 1997; and (3) removing earned credits from his record, all of which lengthened his sentence. We do not know when or how SCDC changed Carpenter's sentence from one eligible for work release, but that, too, was a change made to lengthen Carpenter's sentence.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action." State v. Binnar, 400 S.C. 156, 733 S.E.2d 890, 895 (2012), citing Youngberry v. Romeo, 457 U.S. 307, 316, 102 S.Ct. 2452, 2458 (1982). The Supreme Court focused its decision in Binnar on "what process is due in the circumstances" of the individual case. Where, as here, SCDC has been systematically denying Carpenter due process rights, in numerous ways, always without notice to him, it is inescapable that SCDC has violated Carpenter's due process rights.

Should this Court order and require that SCDC fix any of the illegal sentencing actions it has taken against Carpenter, it is clear that Carpenter's sentence long ago expired. The only rationale result for SCDC's multiple and continuous violations of Carpenter's due process rights is discharge from custody.

Based on the foregoing, Carpenter seeks a Writ of Habeas Corpus and a declaratory judgment finding and order declaring the following,

- (a) SCDC's unilateral increase and modification to his sentence in 2011, which was done without notice to him and without an opportunity to be heard, was illegal and a violation of Carpenter's right to due process of law, and therefore was and is void;

- (b) Carpenter's proper term of incarceration terminated on or about July 5, 2015;
- (c) SCDC improperly removed good time and work credits from Carpenter's sentence after they had been earned and credited to him.
- (d) Carpenter should immediately be released from the custody of SCDC as his legitimate term of incarceration has long ago expired.

DISPARATE TREATMENT – EQUAL PROTECTION

Bobby G. Horne (hereafter "Bobby H.") was arrested in connection with the same course of events as was Carpenter, and also pleaded guilty to a violation of S.C. Code Ann. Section 44-53-370(e). **Trial Exhibit F, pp. 3-4.** Bobby H's plea was to trafficking in cocaine, and was included as part of Case No. 90-GS-47-5002, the same case in which Carpenter pleaded guilty to trafficking in cocaine.

Bobby H. was also sentenced to 25 years under Section 44-53-370(e). His sentence for trafficking in cocaine was identical to Carpenter's. On information and belief, Bobby H. was given sentence credits for good time served, pursuant to S.C. Code Section 24-13-210, earned work credits pursuant to S.C. Code Section 24-13-230, was eligible for parole, and was eligible for work release and release and supervised furlough. As a result, Bobby H. was released from active custody to supervised furlough on August 30, 2001, and his sentence terminated completely on March 1, 2002. **Trial Exhibit F, pp. 1-2.**

Carpenter was initially allowed to earn the same credits that Bobby H. earned, and was originally made eligible for work release. At some point, after Carpenter's earned credits were stripped from him, and his eligibility for work release was also extinguished, all unilateral acts by

SCDC. These disparate treatments occurred on a sentence on the same indictment, and of the same offense, as was Carpenter sentenced.

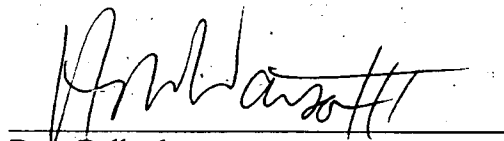
On information and belief, other inmates who have been in the custody of SCDC with 25-year sentences for trafficking in cocaine in violation of Section 44-53-370(e) have been granted work credits, good time credits, other administrative credits, have been released on supervised furlough or some combination thereof. **Trial Exhibit B, p. 3675.**

Carpenter and Bobby H. were treated differently by SCDC in terms of work credits earned, parole edibility, work release and supervised furlough, although their sentences on Case No. 90-GS-47-5002 were identical. Disparate treatment regarding administrative credits, work release, supervised furlough and parole being made available to inmates who were adjudicated guilty (through plea or trial) of the same exact crime as Carpenter, and those given the exact same sentence as Carpenter, violates Carpenter's rights to equal protection of law.

1. Carpenter is informed and believes that his sentences on Case No. 90-GS-47-5001 and 90-GS-47-5002 should have been eligible for administrative credits, work release, supervised furlough, and parole, if he was afforded equitable treatment with those similarly situated to him, *i.e.*, persons sentenced to 25 years in prison for violation of 44-53-370(e).
2. Carpenter is informed and believes that he is entitled to a declaration of this Court that his sentence for violation of Section 44-53-370(e) on Case No. 90-GS-47-5002 should be carried out with all appropriate grant of credits to which others who were similar situated, including Bobby H., were eligible and did receive.

Conclusion

As demonstrated by the various illegal actions and jurisdictional issues, Carpenter is being detained illegally by SCDC and should be immediately released from custody. Carpenter seeks the issuance of a Writ of Habeas Corpus ordering and requiring SCDC to immediately release Carpenter from its custody without restrictions of any kind and its records corrected to reflect that Carpenter's sentence has been served in full. Carpenter also seeks entry of an order of declaratory judgment granting the same relief.



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ATTORNEYS FOR PLAINTIFF

June 5, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Charles E. Carpenter,

Appellant,

v.

The State,

Respondent.

Appeal From Marlboro County
Edward B. Coningham, Judge

Memorandum Opinion No. 95-MO-234
Heard June 15, 1995 - Filed August 3, 1995

AFFIRMED

Chief Attorney Daniel T. Stacey, of South Carolina Office of
Appellate Defense, of Columbia, for Appellant.

General Counsel Larry C. Batson and Deputy General Counsel
Robert E. Petersen, both of South Carolina Department of
Corrections, of Columbia, for Respondent.

PER CURIAM: On November 27, 1989, Carpenter was arrested and incarcerated on charges of trafficking in marijuana and cocaine. He subsequently pled guilty to the charges and was sentenced to a total of fifty (50) years imprisonment without the possibility of parole. The South Carolina Department of Corrections recorded Carpenter's sentence start date as May 8, 1990. Without filing an application for post-conviction relief pursuant to S.C. Code Ann. § 17-27-20 (1976), Carpenter filed a petition for habeas corpus contending that his sentence should be credited to reflect the pre-trial detention period from November 27, 1989, until May 8, 1990. Without holding an evidentiary hearing, the circuit court dismissed the petition.

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 incarcerated. See *McCall v. State*, 247 S.C. 15, 145 S.E.2d 419 (1965); *Shelmut v. State*, 247 S.C. 41, 145 S.E.2d 420 (1965). Moreover, we have held that all avenues available under post-conviction relief should be exhausted prior to the filing of a petition for habeas corpus, and such petition may be dismissed without an evidentiary hearing where claims contained therein are proper issues for post-conviction relief. *Pennington v. State*, ____ S.C. ____, 441 S.E.2d 315 (1994).

000352

ROA 0420

CARPENTER v. STATE

Carpenter did not request nor was he entitled to release from confinement. Carpenter's contention that his pre-trial jail time should be credited to his current sentence is not a proper issue for habeas corpus relief. Further, Carpenter did not exhaust all avenues available under post-conviction relief prior to his filing of a petition for habeas corpus. Accordingly, the circuit court's dismissal of the petition is

AFFIRMED.

Ernest A. Loring Jr. C.J.
Robert E. Moore A.J.
James E. Moore A.J.
John H. Walden Jr. A.J.
Ed. E. Hume A.J.

000353

ROA 0421

ROA 0422

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Charles Eugene Carpenter	)	Case No. 2016-CP-40-6916
	)	
Plaintiff	)	
vs.	)	MOTION TO RECONSIDER
	)	
The State of South Carolina, and	)	
South Carolina Department of	)	
Corrections	)	
Defendants	)	

RICHLAND COUNTY
FILED
2017 OCT 10 PM 3:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Pursuant to Rule 59(e), SCRCP, Charles Eugene Carpenter (hereafter "Carpenter") moves this Honorable Court to reconsider its orders in this matter that were signed September 12, 2017, but not served upon counsel until October 2, 2017 (and received on that date). This motion applies to both orders filed on October 2, 2017: "Order for Judgment in Favor of The South Carolina Department of Corrections" recorded with the clerk of court at 11:19 AM, and the "Order Dismissing Petition for Writ of Habeas Corpus" recorded at 11:20 AM.¹

It is respectfully asserted that the Court's orders are erroneous for the following reasons:

AS TO BOTH ORDERS

1. The trial judge erred in ruling on the issues presented without considering the exhibits that were introduced into evidence by Carpenter's counsel. Carpenter introduced Exhibits A through F without objection at the hearing on May 18, 2017. The trial court's order in favor of the Department of Corrections (SCDC) refers to the "documents" submitted but does not recognize or even discuss Carpenter's Exhibits. The trial court's

¹ The trial court's orders rule in favor of the defendants by separate orders for each. Relief was sought in the complaint for declaratory judgment and petition for writ of habeas corpus against both defendants.

order in favor of the State of South Carolina (hereafter "the State") does not even acknowledge the existence of the exhibits.

**AS TO THE "ORDER DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS"**

2. This order did not rule on the petition for declaratory judgment brought by Plaintiff. The order addresses only the Petition for Writ of Habeas Corpus.
3. The order fails to rule on Carpenter's motion for entry of default judgment on the declaratory judgment action.
4. The order improperly contradicts the order already issued by Judge Jean Toal and filed on April 25, 2017. In that prior order, Judge Toal addressed a motion to dismiss by SCDC which sought to dismiss the entire action filed by Carpenter and denied that relief, finding that the circuit court was the appropriate forum to address the issues raised in Carpenter's petition. Page 1 of the trial court's order refers to the proceedings which occurred before Judge Toal on April 6, 2017, notes that the motions were "denied," but then proceeds to overrule Judge Toal's order of April 25, 2017 by concluding that the petition for writ of habeas corpus should have been filed in the South Carolina Supreme Court. The trial judge had no authority to overrule Judge Toal's earlier order.³
5. This order rules that the sentencing judge could retain jurisdiction over the plea and sentences imposed on Carpenter *permanently*, beyond the sentencing hearing on June 4, 1990. However, the sentencing judge's authority over the case, and the sentences imposed, ended at the adjournment of the term of court *sine die* for the term during which

³ Page 1 of the trial court's order refers to the proceedings which occurred before Judge Toal on April 6, 2017 and notes that the motions were "denied." but then proceeds to overrule Judge Toal's order.

the June 4, 1990 hearing was held. The portion of the order stating "[t]he trial court had proper jurisdiction to impose the sentences" is conclusory without citation of any law, ignores the facts before the Court, and fails to address the issues raised in the Petition and Complaint.

6. The order rules that the instant action was procedurally barred by virtue of prior habeas corpus and PCR applications, despite Judge Toal having already ruled against the State on this issue, leaving this Court to reverse Judge Toal's order. Moreover, the issues raised in the petition for writ of habeas corpus and complaint were new issues that could not have been, and were not, previously raised.
7. The recitation of the grand jury proceedings relied upon by the Court, beginning on page 11 of this order, recites the current version of S.C. Code Ann. § 14-7-1630(B). However, the statute was amended in 1992, 2002, 2003, 2004, 2005, 2007, 2015 and 2016, all after Carpenter's sentences were imposed. Any analysis of the applicability of § 14-7-1630 should have been made with respect to its form as of 1990.
8. Footnote 5 of the order improperly concludes that the 2003 procedures for the statewide grand jury cases established by Administrative Order State Grand Jury, S.C. Sup.Ct. Order dated March 5, 2003 reflected "the procedure in place at the time [Carpenter was sentenced.]." There is no cited legal or factual support for this finding.
9. The ruling that the Supreme Court's order dated November 15, 1989 had any bearing on Carpenter's case is erroneous because there is no evidence that Carpenter's prosecution arose from "State Grand Jury Investigation No. 89-005" or that it vested unlimited and permanent jurisdiction in the sentencing judge.

10. Even if the Supreme Court's order dated November 15, 1989 applied to Carpenter's case, it did not overrule or abrogate the default termination of jurisdiction which occurred with adjournment of the court *sine die* after the sentencing on June 4, 1990.
11. Likewise, any construction of that order which suggests permanent jurisdiction to amend a sentence *ad infinitum* in the sentencing judge is an erroneous reading of the Supreme Court's 1989 order. The trial judge's authority over Carpenter's case could not have continued to the present time, which is the effect of this trial judge's ruling as to the Supreme Court order.
12. The order's statement "[t]he trial court was not limited in its jurisdiction as it may have been if [the sentencing judge] had been assigned a specific weekly term of court because he was vested with continuing jurisdiction over the case, unique to SGJ cases" is a misstatement of the law, with no cited legal support for the conclusion stated.
13. The order incorrectly indicates that the trial judge was permitted to use the full picture of the investigation and the allegations set forth in the indictments of Carpenter's "along with his codefendants' cases." A trial judge cannot use his own knowledge of other cases to affect his judgment in determining a sentence for a defendant, despite that clearly having occurred with the sentencing judge in this case.

**AS TO THE "ORDER FOR
JUDGMENT IN FAVOR OF [SCDC]"**

14. The order incorrectly concludes that Carpenter was sentenced to a consecutive 25-year sentence on 90-GS-47-05001 because the sentencing judge lacked authority to defer sentencing on the 90-GS-47-05001 after he sentenced Carpenter on 90-GS-47-5002 on June 4, 1990.

15. The order incorrectly concludes that "the procedure and redress [Carpenter] sought is improper" and that that SCDC "is not the proper party to a habeas petition and this Court is not the proper venue for such relief." This conclusion contradicts Judge Toal's prior correct ruling that issues raised by Carpenter were properly before the trial court and against SCDC, and her order is the law of the case.
16. The Order incorrectly concludes that Carpenter must pursue an appeal of an administrative decision because the actions of SCDC violated Carpenter's due process rights and were appropriate for immediate determination in this forum. The effect of the trial judge's ruling was to reverse Judge Toal's earlier ruling which denied SCDC's motion to dismiss.
17. Page 7 of the Order should be amended, as it currently states:

Plaintiff was already afforded the opportunity to challenge the claims of lack of due process concerning the "max-out date" and sentence credits. Plaintiff 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.

(Order, p. 7).

However, the record before the Court shows otherwise. To wit, on page 8 of SCDC's filed Memorandum in Opposition to Plaintiff's Petition for Writ of Habeas Corpus,⁵ SCDC acknowledges as follows:

Though Plaintiff filed grievances relating to his sentence or sentence credits allegedly owed to him, they were not related to a change in his max out date; they dealt with issues regarding the start date of his sentence and time served.

⁵ The referenced exhibits were not produced at trial as the order seems to indicate, but as attachments to the quoted memorandum submitted by SCDC prior to the hearing on the matter.

18. The order should be amended to recognize that SCDC did unilaterally alter and change Carpenter's sentence. By definition a "max-out" date is a part of a sentence and SCDC violated Carpenter's rights to due process when it secretly and unilaterally changed Carpenter's max-out date without notice to him.
19. Exhibit D submitted by Plaintiff at the hearing on June 6, 2017 was an email sent from an employee of SCDC to prior counsel for Carpenter which clearly acknowledges the "change" made, and the lack of protection for Carpenter's due process rights implicated by such a change in the sentence. It states:

The inmate did not receive a hearing prior to his sentence being changed since that was not the process at that time. We have since incorporated a due process hearing for inmates who, through no fault of their own, have a change in their current sentences that affects the projected release to their detriment.

(emphasis added)

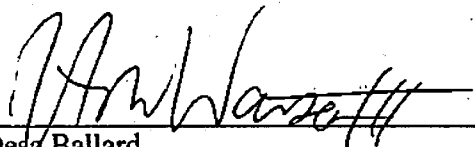
20. The order's use of the word "clerical adjustment" and reference to "happenstance" ignore the extreme effect of the change by SCDC in Carpenter's max-out date, the deliberate nature of the change made, and lack a proper legal basis or justification. Regardless of arbitrary label or descriptor used⁶, a substantive and improper change occurred.
21. Plaintiff need not demonstrate any malice or any other intent for the change for the change in his sentence to be relevant and actionable; the existence of the change itself is sufficient to implicate Plaintiff's rights.

⁶ Likewise, referencing the change as "Plaintiff's sentence was *corrected* in 2011..." (emphasis added) does not diminish the operative effect of the change either. See Order p. 8.

22. The conclusion that SCDC did not violate Plaintiff's due process rights when it changed Carpenter's max-out date unilaterally and without notice to him is therefore incorrect. Carpenter gained a cognizable and protected interest in the max-out date of 2015-2016 when SCDC maintained that max-out date in its public records for more than twenty (20) years.
23. The Order also misapplies the Supreme Court's holding in *Tant*. The *Tant* decision is not limited to construction of sentencing sheets at the initial time of intake to SCDC. Further, the sentencing sheets for Carpenter are ambiguous on their face, to the extent such a threshold showing is necessary, by virtue of having different dates of execution when both charges were resolved by a plea deal that resolved both charges jointly.
24. The Order's conclusion that Carpenter had a "burden [of proof] in demonstrating he was entitled to notice of the change in the projected max-out dates..." is incorrect, as the issue presented is a legal issue relating to Carpenter's due process rights.
25. The trial court erred in concluding that the language of S.C.Code § 44-53-370(e)(1)(d) and 44-53-370(e)(2)(e) at the time Carpenter was sentenced prevented him from earning good time and work related credits.
26. The record establishes without question that SCDC did, in fact, give him those credits, and that SCDC violated Carpenter's due process rights when it stripped those credits from him. This is distinguishable from mere request that credits be provided, and which renders the stated conclusion that Carpenter had no due process rights in work credits "because his sentence did not allow him to earn such credits" incorrect.

27. Carpenter's equal protection claim is not voided by the SCDC error (if any) in releasing another inmate sentenced under the same statutes as Carpenter before that inmate's sentence could also be changed. The trial court erred in failing to find that Carpenter did not establish a violation of the equal protection clause.
28. The Order should be amended to recognize the disparate treatment between Carpenter and Bobby Gene Horne. Horne was given work and sentence credits while Carpenter was not, even though they were sentenced under the same indictment and statute. Even if Carpenter was not eligible for the sentence credits, and it is submitted he was entitled to those credits, they must also be given to Carpenter because they were given to Horne. Failure to do so violates Carpenter's right to equal protection.
29. Carpenter is entitled to habeas corpus relief because the manipulation and changes of his sentence and the disparate treatment between Carpenter and Horne were "shocking to the universal sense of justice" despite the Order's finding to the contrary.

Respectfully submitted,



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Harvey M. Watson III

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harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

October 5, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Charles Eugene Carpenter)
Plaintiff)
v.)
The State of South Carolina and)
South Carolina Department)
Of Corrections,)
Defendant.)

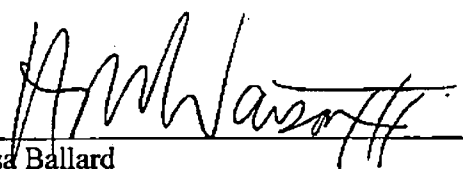
ROA 0430
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2016-CP-40-6916

**EXHIBIT A TO:
MOTION TO RECONSIDER**

RICHLAND COUNTY
FILED
2017 OCT 19 AM 11:27
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff Carpenter files the attached Exhibit A, which is attached hereto and incorporated herein by Reference, all of which is incorporated by reference into the Motion to Reconsideration previously filed on October 10, 2017.

As set forth in Issue One of the Motion for Reconsideration, Defendants introduced no exhibits at trial. The attached confirms that the clerk of court's file has only Plaintiff's exhibits and no exhibits from defendants. As a result, the Court's consideration of "documents" from Defendants was in error.


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ATTORNEYS FOR PLAINTIFF

October 18, 2017

ROA 0431

From: JIM TRUITT
Sent: Thursday, October 05, 2017 8:46 AM
To: ANNE HENLEY
Subject: RE: Trial Exhibits for Carpenter v. SCDOC 2016-CP-40-6916

I have plaintiff's exhibits A-F only.

From: ANNE HENLEY
Sent: Wednesday, October 04, 2017 4:51 PM
To: JIM TRUITT
Subject: FW: Trial Exhibits for Carpenter v. SCDOC 2016-CP-40-6916

Are there any exhibits?

Thanks,

Anne

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

ROA 0431

Exhibit A to Plaintiff's Motion for Reconsideration

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections
and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION BY THE
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

ROA 0432
2017 OCT 23 AM 11:30
FILED
RICHLAND COUNTY
JEANETTE W. MCBRIDE
Clerk, P. & G.S.

Defendant South Carolina Department of Corrections ("SCDC"), through its undersigned counsel, hereby submits its response in opposition to Plaintiff's Rule 59(e), SCRPC, motion.

STANDARD

The South Carolina Rules of Civil Procedure contemplate two basic situations in which Rule 59(e) motion may be filed.

A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

ARGUMENT

- I. Plaintiff contends the Court erred in ruling on issues without considering exhibits presented by Plaintiff at trial.

Plaintiff argues the Court failed to consider Exhibits A-F introduced at trial. [Motion, ¶ 1]. As an initial matter, Plaintiff fails to allege what information contained in Exhibits A-F would cause the Court to reconsider its Order and, therefore, Plaintiff has failed show how the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue.

Exhibits A-F appear to deal with Plaintiff's argument that he should be entitled to good time or work credits or, in the alternative, that Plaintiff should be given good time and work credits because other inmates sentenced under the same statutes erroneously received those credits before SCDC corrected the issue.

As indicated in the Court's Order, the parties agreed that the facts of the case were not in dispute. It is uncontested 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. [Plaintiff's Trial Exhibit D]. When it was determined that some inmates' sentences were not correctly reflecting the mandatory minimum, an audit was performed of inmates serving time for these offenses; Plaintiff was one of those inmates. [*Id.*]. While Plaintiff's sentence was corrected in 2011 to account for the day-for-day requirement by removing credits, his co-conspirator's sentence and some other inmate's sentences was not corrected. As to the co-conspirator Bobby Horne, he was released from SCDC 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.*].

Even if the Court's Order does not specifically reference Exhibits A-F, the exhibits simply present duplicative information raised and argued at trial and addressed by the Court in its Order finding there was no disparate treatment and, therefore, no violation the equal protection clause of the Fourteenth Amendment. Therefore, Plaintiff's motion should be denied. *See King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016) (stating "[t]o 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") (emphasis added).

- II. Plaintiff contends the Court erred in finding in favor of SCDC because the sentencing judge did not have authority to defer sentencing on indictment 90-GS-47-05001.

Plaintiff contends the Order incorrectly concludes that Plaintiff was sentenced two (2) consecutive twenty-five (25) terms of imprisonment. [Motion, ¶ 14].

As aptly stated by the Supreme Court of South Carolina, “[w]e see no reason why [SCDC] should not be able to rely on unambiguous sentencing sheets as indicative of the intended sentence.” *Tant v. S.C. Dep’t of Corr.*, 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014). Plaintiff’s argument would require SCDC to disregard the plain, unambiguous language in the sentencing sheets and perform an investigation to determine if the sentencing sheets were valid based solely upon the dates the sheets were signed. SCDC would presumably then have to render its own interpretation as to the legitimacy of the second sentencing sheet, adopt Plaintiff’s arguments that the court lacked authority to issue the second sentence, and willfully disregard the court’s second sentence sheet. This type of investigation seems to be specifically prohibited by the discussion and ruling in *Tant*. Therefore, Plaintiff’s motion should be denied.

- III. Plaintiff contends the Court erred in finding SCDC was not the proper party to the *habeas* petition and this Court was not the proper venue for the relief sought.

Plaintiff contends the Court erred in dismissing the *habeas* petition as to SCDC. [Motion, ¶ 15]. Specifically, Plaintiff contends the ruling contradicts the Order denying SCDC’s Motion to Dismiss.

The Order denying SCDC’s Motion to Dismiss stated that Plaintiff raised the following issue not before the Circuit Court, specifically, that his term of incarceration expired and he was

being held illegally. The Order further stated that issue is not required to be determined internally by SCDC procedure. [Order on Motion to Dismiss, p. 5].

As set forth above, SCDC performs the ministerial task of enforcing unambiguous sentences issued by the courts of this state. While the Order correctly states that an inmate challenging the validity of a sentence is not required to proceed through SCDC's grievance process, it did not address whether SCDC was a correct party as to the issue of whether Plaintiff's second sentence was valid. *Al-Shabazz v. State*, 338 S.C. 354, 368, 527 S.E.2d 742, 749 (2000). Moreover, Plaintiff's pre-trial memorandum filed June 7, 2017, alleges as to SCDC issues with the change in max-out date (due process), removal of good time credits (due process), and disparate treatment (due process). The issue of the validity of the sentences is correctly directed to the State as evidenced by the Order joining the State as a party as well as the arguments presented by the parties. Therefore, the Court correctly dismissed the claim for *habeas* relief as to SCDC and the motion should be denied.

IV. Plaintiff alleges the Court erred in finding Plaintiff must pursue an appeal of the administrative decision concerning his sentence calculation and credits.

Plaintiff contends the Court reversed the Order dismissing SCDC's Motion to Dismiss by finding Plaintiff had to appeal his sentence calculation/credits issue to the ALC. [Motion, ¶ 16]. As previously stated, the Order denying the Motion to Dismiss stated the issue before the court was whether Plaintiff was being unlawfully held due to the alleged invalidity of the second sentence, which is not an issue required to be grieved through the institution. However, the Order being challenged found that Plaintiff was provided notice, the opportunity to file a grievance, and the opportunity to appeal to the ALC and, therefore, there were no due process challenges. To the extent Plaintiff again reverts to the argument that the petition for *habeas*

relief relates to the correction in Plaintiff's max-out date and sentence credits, *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). Accordingly, the motion should be denied.

V. Plaintiff alleges various errors with regard to the Court's ruling on corrections to Plaintiff's max-out date.

Plaintiff raises various issues relative to the ruling that Plaintiff's due process rights were not violated due to the corrections in his max-out date. [Motion, ¶¶ 17, 18, 19, 20, 22, 24].

Plaintiff does not cite to any evidence to contradict the Court's findings that Plaintiff was provided notice of the change in his max-out date, the opportunity to file a grievance, and the right to judicial review and that he failed to pursue those options.¹ Regardless, the Court has found that the Plaintiff's sentences were valid. Therefore, Plaintiff is currently serving his second twenty-five (25) year sentence day for day and has failed to establish any prejudice. *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (holding "proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice"). Therefore, the motion should be denied.

VI. Plaintiff alleges the Court erred in finding the Plaintiff was prevented from earning credits.

¹ Plaintiff contends the grievances referenced in the Order are not in the Clerk of Court's file. Attached hereto is Exhibit 1, which is 13 pages of records that were, upon information, belief, and recollection, presented to the Court and discussed in arguments at trial. Presumably, the records may be in the Court's file. The copies prepared for counsel and the Court are not in the undersigned's file. In any event, the parties agreed that the facts were not in dispute and Plaintiff has not cited any evidence that he did not receive notice of the change in this max-out date, was denied the opportunity to file a grievance, or was denied the opportunity for judicial review.

Plaintiff contends the Court erred in finding S.C. Code § 44-53-370(e)(1)(d) and § 44-53-370(e)(2)(e) prevented him from earning credits. [Motion, ¶ 25].

At the time of Plaintiff's 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.* Plaintiff presented no evidence or legal authority to call into question the plain language of the statutes. Therefore, the motion should be denied.

VII. Plaintiff alleges various errors with regard to the Court's ruling on Plaintiff's equal protection claim.

Plaintiff argues the Court erred in holding there was no disparate treatment in the fact that other inmates received credits who were sentenced under the same statutes as Plaintiff. [Motion, ¶¶ 21, 26, 27, 28, 29].

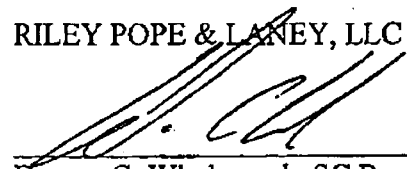
"To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *King*, 825 F.3d at 220. Plaintiff presented no evidence that his alleged unequal treatment from that of his co-conspirator was the result of intentional or purposeful discrimination. Moreover, the only matter "shocking to the universal sense of justice" is that another inmate should currently be incarcerated but for a computer error. Accordingly, the motion should be denied.

CONCLUSION

For the reasons set forth herein, SCDC requests that the Motion for Reconsideration be denied.

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE

RILEY POPE & LANEY, LLC ROA 0438



Damon C. Włodarczyk, SC Bar 70460
Post Office Box 11412
Columbia, South Carolina 29211
(803) 799-9993
Attorneys for SCDC

October 18, 2017
Columbia, South Carolina

11:25:16 Monday, May 15, 2017

GRFI220D
OMGRIEFA

SCDC OFFENDER MANAGEMENT SYSTEM
INMATE GRIEVANCE APPLICATION
ALL GRIEVANCES FILED BY AN INMATE

05/15/17
C054010

ROA 0439

SCDC ID ...> 181783

LOC...: EVANS

CARPENTER, CHARLES EUGENE

DATE FILED	GRIEVANCE#	GRIEVANCE ISSUE/AGAINST	GRIEVANCE LEVEL	DISP
09/08/13 ECI	1268-13	CLASSIFICATION ISSUE	CENTRAL OFFICE	GRIEVANCE DENIE
09/04/13 ECI	1253-13	CLASSIFICATION ISSUE	INSTITUTION	GRIEVANCE PROCE
08/02/13 ECI	1157-13	CLASSIFICATION STAFF		
08/02/13 ECI	1157-13	CLASSIFICATION ISSUE	INSTITUTION	GRIEVANCE PROCE
07/28/03 ECI	0641-03	CLASSIFICATION ISSUE	CENTRAL OFFICE	GRIEVANCE DENIE

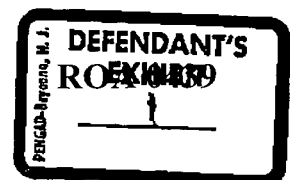
*END-**

RESPONSE:

PAGE: 0001

SELECT A RECORD AND PRESS <ENTER>.....

FUNC. KEYS> ENTER:INQUIRE PF2:MORE PAGES PF3:ADDGRV PF4:MODGRV PF6:AUDIT



11:25:26 Monday, May 15, 2017

GRFI100D
OMGRIEFA
SCDC #: 181783

SCDC OFFENDER MANAGEMENT SYSTEM
INMATE GRIEVANCE APPLICATION
INQUIRE

05/15/17
C054 ROA 0440

CARPENTER, CHARLES EUGENE RACE/SEX: WM AGE: 63 CURR LOC: EVANS
PROJ MAXOUT: 04/07/40 PROJ PAROLE: 00/00/00 CURR CUST: MI2

GRIEV LOC: 0531 ECI GRIEV NUM: 1268-13 GRIEV TYPE.: C CLASSIFICATI
GRIEV ISSUE.....: CL CLASSIFICATION DATE OCCURRED...: 09/08/13
GRIEV AGAINST.....: DATE FILED.....: 09/08/13
DESIGNEE RECD.....: IGC INITIAL: AG IGC RECEIVED....: 09/10/13
TEXT/REQUESTED ACTION: INMATE STATES THAT HIS GOOD TIME AND
WORK CREDITS HAS BEEN TAKEN BY SCDC. INMATE WANTS HIS GOOD TIME AND EWC REINSTA
TED

:END

---INSTITUTION-----|---CENTRAL OFFICE-----|
ACTION DUE DATE.: 10/25/13 DUE DT: 03/11/14
ACTION DATE.....: 12/10/13 ACTION: 03/17/14
HOW RESOLVED.....: FORMAL CURR LEVEL: CENTRAL OFFICE
INMATE RESPONSE.: APPL FINAL DISP: 02 GRIEVANCE DENIED
APPEAL RECEIVED.: 12/11/13 CREATE BY: BENJAMIN DATE: 09/10/13
FINAL DISP SERVED: 04/01/14 UPDATED BY: GRAVES DATE: 04/01/14
GRIEVANCE INFORMATION DISPLAYED FOR INQUIRY ONLY...
PFKEY PF3:ADD PF4:MOD PF6:AUDIT PF8:NEXT PF10:MEND

ROA 0440

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

5th 1st
ROA 0441
DEC 15

INMATE NAME Charles Carpenter
SCDC NUMBER #181783
INSTITUTION Evans LI
HOUSING UNIT E2-A-166
WORK ASSIGNMENT DORM

Office Use Only
Grievance No. 001608-B
Code: General _____
Policy _____
Disc. Hear. _____
Class. N _____
Date Received 12/11/13
IGC Initials AG

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

By Warden Not accept my return and NOT going by
state statute, he is violating state law, and which
am being held pass my max-out date, which is a
law against the state,
and statute list and fall under (24-13-210) which I
am under, need 100% different from Warden response.

Charles Carpenter 12/10/13
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concerns have been reviewed. Warden Eagleton appropriately addressed your concerns. As you have been informed, you are required to serve a mandatory sentence of 25 years. No part of this sentence can be reduced by good time credits, earned work credits, earned education credits, or parole.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Warden 3-17-14
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Charles Carpenter 4/1/14
Grievant Signature Date

A. G. W. 4/1/14
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

ROA 0442

STEP 1

INMATE NAME: Charles Carpenter
SCDC NUMBER: #151793
INSTITUTION: Evans CI 1
HOUSING UNIT: F2-A-166
WORK ASSIGNMENT: Drum

Office Use Only
Grievance No. FCJ-1268-13
Code: General CL/CL
Policy _____
Disc. Hear. _____
Class. _____
Date Received 9-10-13
IGC Initials DSAG

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy)

For some reason my (Good Time) and (earn work credits) have been taken off. SCDC, used and etc. located under state statute, (C.P. 21.09) at (2.4-13-210) state that straight time inmate get 180 days of pre-gear plus earn work credits, and under (44-53-370) which I was charged under, Don't state or show that anyone arrested Nov-27-1984 has to do (Pay for Day) as case worker etc say, only life time sentence does all their time, not straight time inmate, which (I AM a straight time offender).

ACTION REQUESTED: Put Good time back and work credits like 100 state under (CP-21.09), by not doing this is a crime again state, for me doing more time than Law state.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Attach in a ~~document~~ Request to Staff, as required in C-A-01, 12 Inmate Grievance Procedure. plus get up with Head Council at Evans told me some thing,

Charles Carpenter Sept 8-13
Grievant Signature Date

ACTION TAKEN BY IGC:

Your grievance along with pertinent documentation has been reviewed, see warden's response

- ☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

A. C. W. 12/9/13
IGC Signature Date

Grievant Signature ROA 0442

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter, #181783,

Petitioner,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016-CP-40-06916

RETURN TO PETITIONER'S
MOTION TO RECONSIDER

ROA 0443

RICHLAND COUNTY
FILED
2017 OCT 30 PM 1:31
JEANETTE N. MCBRIDE
C.C.E. & G.S.

Respondent, by and through undersigned counsel, making its Return to Applicant's
"Motion to Reconsider," would respectfully show unto this Court:

I.

Petitioner filed this Petition for Writ of Habeas Corpus on November 18, 2016. Respondent filed a Return and Motion to Dismiss on March 31, 2017. By written Order filed October 2, 2017, this Court denied and dismissed the petition with prejudice. On October 10, 2017, Petitioner sent for filing a "Motion to Reconsider." This Return follows.

II.

In his motion, Petitioner asks this Court to reconsider its ruling on a number of grounds. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court properly ruled on all issues. The Court has not overlooked or disregarded any material fact or principle of law. Furthermore, the order contains no errors of law and fully considers all facts and arguments presented. Petitioner's motion should be denied.

[Signature block on following page]

III.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that Petitioner's Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

October 25, 2017

9c COPY

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

RICHLAND COUNTY
FILED
2018 JAN -4 PM 2:55
JEANNETTE MCBRIDE
C.C.P.

Charles Eugene Carpenter,.....Appellant

vs.

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

NOTICE OF APPEAL

Appellant Charles Eugene Carpenter (hereafter "Carpenter") appeals from the orders of the Honorable Robert E. Hood filed on October 2, 2017, and the subsequent order dated December 18, 2017 denying Carpenter's motions to reconsider, notice of which was received by counsel for Mr. Carpenter on or about December 18, 2017. Copies of both orders being appealed as well as the order denying reconsideration are attached hereto and incorporated by reference.

Respectfully submitted,

Desa Ballard by amw
Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

December 20, 2017

ROA 0445

Other Counsel of Record:

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Riley Pope & Laney, LLC
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803.799.9993

ATTORNEY FOR RESPONDENT SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Clay Mitchell III, Esquire
Post Office Box 11549
Columbia, South Carolina 29211
803.734.3693

ATTORNEY FOR RESPONDENT THE STATE OF SOUTH CAROLINA

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-06916

ROA 0447

Charles Eugene Carpenter

South Carolina Department of Corrections and
~~the 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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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 :

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 (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

ROA 0447

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

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

Dora Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

Damon Wlodarczyk, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROA 0448

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections
and the State of South Carolina,

Defendants.

(Our File No.: 5021.01216)

ROA 0449
IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**ORDER FOR JUDGMENT IN FAVOR
OF THE SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS**

2017 OCT -2 AM 11:19
FILED
RICHLAND COUNTY
CLERK OF COURT

Plaintiff brought this declaratory judgment action and petition for writ of habeas corpus asserting he was being detained after the expiration of his sentence and should be immediately released from the custody of the South Carolina Department of Corrections ("SCDC"). A hearing was held in which the parties agreed the facts were undisputed and each party put forth their respective legal arguments as to the merits. After reviewing the documents submitted with the Court and hearing arguments of counsel, the Court now denies the relief sought by Plaintiff.

BACKGROUND

Plaintiff is currently confined in the Evans Correctional Institution of the South Carolina Department of Corrections. Plaintiff filed a Summons and Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus on November 18, 2016. Plaintiff immediately thereafter filed a Motion captioned "Petition for Writ of Habeas Corpus (Expedited)." Service of the documents were accepted by SCDC on November 23, 2016. On December 23, 2016, the undersigned filed and timely served a pre-Answer Motion to Dismiss the action. On February 16, 2017, Defendant filed and served a Memorandum in Opposition to Plaintiff's Petition.

Defendant's motion to dismiss was initially heard by Judge Casey Manning on February 16, 2017. Judge Manning issued an Order providing that the State of South Carolina be made a

ROA 0449

party to the action for the purposes of defending the claim concerning Plaintiff's original sentences.

Plaintiff subsequently served a copy of the Amended Summons, Petition/Complaint and Judge Manning's Order on the State of South Carolina ("State"). On or about March 31, 2017, the State filed and timely served a Return and Motion to Dismiss. On April 6, 2017, a hearing was held before Judge Jean Toal on the motions to dismiss filed by the Defendants. Judge Toal orally denied the motions. However, the written Order denying the motions was not filed until April 25, 2017, at which time a copy of the Order was e-mailed to counsel by the clerk's office. The Order first provided that Defendants would have fifteen (15) days to file Answers. However, the last sentence of the Order stated that Defendants would have fifteen (15) days from the date of the hearing (April 6, 2017) to file Answers and a merits hearing would be scheduled immediately thereafter.

Plaintiff requested a merits hearing with the Chief Administrative Judge on April 11, 2017, which was noticed on April 19, 2017, prior to the Answer deadlines set forth in the Order or pursuant to Rule 12(a), SCRCP.

On April 28, 2017, the State filed and served an Amended Return. On May 10, 2017, Defendant SCDC filed and served its Answer and Motion to Bifurcate one (1) issue to be tried at a later date. On May 12, 2017, Plaintiff e-mailed a copy of his Motion for Entry of Default against Defendants and Motion for Summary Judgment.

A bench trial was convened on June 7, 2017. Prior to the start of the trial, the Court took up the pending motions to bifurcate, entry of default, and summary judgment. Defendant SCDC withdrew the motion to bifurcate. The motion for entry of default was denied, with the consent of the parties, as the facts are not in dispute and the Plaintiff still has the burden of proof against

the State and state agency pursuant to Rule 55(e), SCRCP. As a bench trial was held, the motion for summary judgment is moot and, therefore, is denied.

FACTS

The Plaintiff was indicted in November 1989 by the State Grand Jury for conspiracy to traffic marijuana and conspiracy to traffic cocaine; Plaintiff pled guilty to the charges. Plaintiff was later sentenced to confinement for a period of twenty-five (25) years for conspiracy to traffic in marijuana and an additional twenty-five (25) years for conspiracy to traffic in cocaine. Plaintiff was offered a plea deal in which his cooperation with pending investigations would allow him to serve these sentences concurrently. However, Plaintiff ultimately failed to cooperate and the sentences were ordered to run consecutively. Since Plaintiff's sentencing, he has appealed his sentences and conviction through numerous courts and causes of action. Each court has upheld both his conviction and sentence.

Plaintiff's present arguments for the abrogation of his sentence is as follows:

- 1) That his due process rights were violated when SCDC administratively corrected a computer error that listed an incorrect "projected max-out date" for Plaintiff;
- 2) That his due process rights were violated when SCDC removed earned credits from Plaintiff's sentence; and
- 3) That Plaintiff should receive earned credits because a co-conspirator who was sentenced under the same statute as Plaintiff received credits and, therefore, Plaintiff contends he is receiving disparate treatment.

This Court now holds that (1) SCDC did not violate Plaintiff's due process rights when it corrected the "projected max-out date," (2) Plaintiff had no due process rights in work credits because his sentence did not allow for him to earn such credits, (3) even if SCDC had violated

Plaintiff's due process rights, the procedure and redress Plaintiff sought is improper and Plaintiff failed to appeal his SCDC's administrative decisions, (4) there was no disparate treatment as the Plaintiff is statutorily prohibited from receiving credits on his sentence, and (5) habeas corpus against SCDC is improper.

A. DUE PROCESS RIGHTS

- 1) **Plaintiff's sentence was not recalculated from SCDC's initial determination and, therefore, there is no right to notice or judicial review.**

"Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." *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. "The fundamental requirements of due process include notice, an opportunity to be heard, in a meaningful way, and judicial review." *Id.* The *Tant* court determined that "the length of an inmate's incarceration implicates a constitutional liberty interest" which requires compliance with due process requirements. *Id.* As result, the *Tant* court held that "... 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.* 408 S.C. at 342, 759 S.E.2d 401.

As an initial matter, unlike the facts set forth in *Tant*, the sentencing sheets in the present action are unambiguous. The record clearly reflects that in case 90-GS-47-05002, Plaintiff was sentenced on June 4, 1990, to twenty-five (25) years incarceration to run concurrently with a federal sentence that Plaintiff was serving at that time. [Petition, Exhibit D]. Concerning case 90-GS-47-05001, Plaintiff was sentenced on August 9, 1990, to twenty-five (25) years incarceration to run consecutively to the sentence on 90-GS-47-05002. [Petition, Exhibit F].

Accordingly, the facts giving rise to the *Tant* holding, namely, that SCDC interpreted ambiguous sentencing sheets which resulted in an increased sentence without providing the inmate notice and the right to judicial review, are not present in this action. *See Tant*, 408 S.C. 342, 759 S.E.2d 402 (stating “. . .[SCDC] is generally confined to the face of the sentencing sheets in determining the length of a sentence . . .”)¹

It is true that if 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. *Tant*, 408 S.C. at 337, 759 S.E.2d at 399. However, in Plaintiff's case, SCDC did not alter Plaintiff's sentence. SCDC made a clerical adjustment to the “projected max-out date” to accurately reflect the unambiguous sentencing sheet and to match the sentence already listed in his records. [Petition, Exhibits I-Q (all providing the following information: total sentence 50 years, current sentence 50 years, current sentence start date 4/7/90)]. Plaintiff has failed to meet his burden in demonstrating he was entitled to notice of the change in the projected max-out dates and judicial review as there was no change in the sentences, as evidenced by the above records, and there was no testimony regarding what effect, if any, the “projected max-out date” has. *See Tant*, 408 S.C. at 346, 759 S.E.2d at 405 (stating “[SCDC] must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing”).

Plaintiff's sentence was not unilaterally altered by SCDC at any point in time and the sentence correctly reflects that which was imposed on the two (2) unambiguous sentencing sheets and as such, Plaintiff has suffered no due process violations.

¹ Moreover, Plaintiff's own application for habeas corpus filed in federal court in 2002 states, “[l]ength of sentence 25 years & 25 years (50 total)[.]”

2. Plaintiff is not entitled to receive sentence credits.

Plaintiff alleges that he was deprived of his liberty when SCDC removed good time and work related credits from his sentence. [Plaintiff's Memorandum in Support Section II]. The evidence before the Court shows Plaintiff was sentenced pursuant to S.C. Code §§ 44-53-370(e)(1)(d) and 44-53-370(e)(2)(e). [Complaint, Exhibit U]. At the time of Plaintiff's 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.*

As there was no credible evidence presented at trial to counter the facts presented in Exhibit U, Plaintiff has failed to prove it was in error for SCDC to remove all credits from his sentence.

To the extent Plaintiff alleges it was a violation of his due process rights to remove the credits, the argument fails as set forth in section 3 of this Order.

3. Plaintiff's due process rights were not violated.

Assuming *arguendo* that the ministerial change in Plaintiff's "projected max-out date" could be construed as a change in Plaintiff's sentence calculation, Plaintiff was provided notice, the opportunity to file an institutional grievance, and the right to judicial review.² Additionally, with regard to any allegation that Plaintiff's due process rights were violated with regard to the removal of his sentence credits, Plaintiff has failed to show substantial prejudice.

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

² See Tant, "[t]he inmate who is allegedly aggrieved by an ambiguous sentence can, if he chooses, seek judicial review *through the grievance process* and thus, "the interpretation of the unclear sentence" would be "made by a judicial officer." 408 S.C. at 342 n.3, 759 S.E.2d at 401 (emphasis added).

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).

Plaintiff was already afforded the opportunity to challenge the claims of lack of due process concerning the "projected max-out date" and sentence credits. Plaintiff 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. 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.³ 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. The Step 2 response stated that no part of the sentence could be reduced with credits. Plaintiff 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). As such, Plaintiff failed to timely appeal the issue and it is now time barred.

To the extent that Plaintiff may be owed due process concerning his sentence calculation, Plaintiff was afforded notice, the right to file a grievance and an opportunity for judicial review of SCDC's decision; he chose not to seek such judicial review. Plaintiff 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.

4. Plaintiff did not suffer disparate treatment.

³ Plaintiff is not entitled to goodtime or work credits under the statutes he was sentenced

Plaintiff contends he suffered disparate treatment with regard to the removal of his sentence credits because other inmates received said credits.

“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.*

In the present case, 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. [Plaintiff's Trial Exhibit D]. When it was determined that some inmates' sentences were not correctly reflecting the mandatory minimum, an audit was performed of inmates serving time for these offenses; Plaintiff was one of those inmates. [*Id.*]. While Plaintiff'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 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 Plaintiff's treatment with regard to the removal of his credits was a result of intentional or purposeful discrimination. Rather, it was a result of an oversight that was subsequently corrected after the co-conspirator's release from SCDC. Accordingly, Plaintiff has failed to prove a violation of the equal protection clause.

Based upon the information set forth above, Plaintiff's request for declaratory judgment is denied and judgment is rendered in favor of SCDC.

B. HABEAS RELIEF

SCDC is not the proper party to a habeas petition and this Court is not the proper venue for such relief. The South Carolina Supreme Court has held, "that a matter which is cognizable under the [Uniform Post-Conviction Procedure] Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts." *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). In order for a writ of habeas corpus to be issued, there must be a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). The South Carolina Constitution allows suspension of the writ of habeas corpus only in cases of insurrection, rebellion or invasion, or as the public safety may require it: S.C. Const. Art. I, § 18. However, "our action today does not suspend the writ, but merely curtails its use to those situations where the Act would not be applicable." *Simpson*, 329 S.C. at 46-47.

Additionally, 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. *Id.* Habeas corpus is available only when other remedies, such as PCR, are inadequate or unavailable. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). 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). Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5.

As these claims could be raised under a PCR application, they are procedurally barred and as such, the only avenue through which Plaintiff can file a petition for a writ of habeas corpus is in the original jurisdiction of the Supreme Court.

On the merits, Plaintiff is not entitled to relief for the grounds set forth in the Court's ruling on the claims for declaratory relief.

CONCLUSION

IT IS ORDERED THAT the Plaintiff's Petition and Complaint are DENIED and this action is forever ended with prejudice.

IT IS SO ORDERED.

Re Hood

ROBERT E. HOOD
Circuit Court Judge, Fifth Judicial Circuit

Sep 12
July __, 2017

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-06916

ROA 0459

Charles Eugene Carpenter

~~South Carolina Department of Corrections and
the 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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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 :

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 (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

ROA 0459

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Re Hood
Circuit Court Judge

2164
Judge Code

9/14/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Oct, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

DESA Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

Clay Mitchell, SCAG

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Janette W. McBride

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROA 0460

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Charles Eugene Carpenter, #181783,

Petitioner,

v.

State of South Carolina,
South Carolina Department of Corrections,

Respondent.

ROA 0461
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016-CP-40-06916

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

2017 OCT -2 PM 11:20
J. L. MANNING
CLERK OF COURT

This matter comes before the Court by way of a Petition for Writ of Habeas Corpus filed November 18, 2016. The South Carolina Department of Corrections, filed a motion to dismiss on December 28, 2016 and a memorandum in support of that motion on February 15, 2017. A hearing was held on February 16, 2017, before the Honorable L. Casey Manning. The State was subsequently joined as a party pursuant to an Order issued by Judge Manning dated February 23, 2017. The State also filed a motion to dismiss. A hearing was held on April 6, 2017 before the Honorable Jean H. Toal where the motions were denied. A bench trial was held on June 7, 2017, at the Richland County Courthouse.

In this action, Petitioner makes claims against the State and against the South Carolina Department of Corrections. This Order dispenses with the claims made against the State. Petitioner asserts that he is being held unconstitutionally because the plea judge lacked jurisdiction and authority to impose a consecutive twenty-five (25) year sentence. First, this Order will detail Petitioner's original charges and subsequent collateral challenges. Then the claims against the State will be addressed.

I. Procedural History

A. Underlying Convictions

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the State Grand Jury Clerk of Court. At a March 1990 session, the South Carolina State Grand Jury (SGJ) issued a seven (7) count superseding indictment against Petitioner and nine (9) other defendants. (1990-GS-47-05-001). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Marijuana (Count 1), and Trafficking in Marijuana (Count 2). At the same session, the South Carolina State Grand Jury issued a superseding eighteen (18) count indictment against Petitioner and ten (10) other defendants. (1990-GS-47-05-002). Specifically, Petitioner was indicted for Conspiracy: Trafficking in Cocaine (Count 1), and Trafficking in Cocaine (Count 2). Petitioner was represented on the charges by Lionel S. Lofton, Esquire.

On April 7, 1990, Petitioner pled guilty before the Honorable Edward B. Cottingham to the conspiracy counts in both indictments in return for the dismissal of the other counts as well as the dismissal of numerous other serious charges.¹ Petitioner pled pursuant to a written plea agreement which provided that he would receive concurrent twenty-five (25) year sentences on the conspiracy counts *if* he abided by the agreement and cooperated with authorities, but the State could request that the sentences be run *consecutively* if he failed to cooperate. Sentencing was deferred until June 4, 1990, at which point the parties returned before Judge Cottingham. Petitioner had moved to fire Mr. Lofton and retain new counsel, Timothy F. Rogers and Michael

¹ While not part of the plea agreement, numerous charges brought by other jurisdictions were dismissed. Marlboro County burglary and kidnapping charges were dismissed. Richland County charges were dismissed. Federal firearm charges were dismissed out of the Florence Division of the U.S. Attorney's Office. It was agreed that sentences on pending North Carolina charges would be served concurrently with the South Carolina sentences. The State further agreed not to pursue charges against Petitioner for offenses that were committed prior to the State Grand Jury indictments.

J. Cox, Esquires. Judge Cottingham allowed Mr. Rogers and Mr. Cox to appear but ordered Mr. Lofton to remain on the case due to his familiarity with the issues and the late nature of Petitioner's decision. Judge Cottingham sentenced Petitioner to twenty-five (25) years' imprisonment and a \$200,000 fine on Indictment 90-002 (Cocaine), but deferred sentencing on 90-001 until a hearing could be held on the State's allegations that Petitioner had breached the plea agreement previously entered by refusing to cooperate.

Judge Cottingham convened a hearing to determine whether Petitioner had breached the plea agreement on August 9, 1990. Testimony was taken from various witnesses including investigators and a codefendant. At the conclusion of the hearing, Judge Cottingham found that Petitioner had willfully failed to cooperate with authorities and indeed had threatened witnesses and codefendants. Accordingly, Judge Cottingham found that Petitioner violated his obligations under the plea agreement and sentenced Petitioner to a consecutive twenty-five (25) years and \$50,000 fine on Indictment 90-001.

Judge Cottingham retained jurisdiction to allow Petitioner a final opportunity to cooperate with law enforcement as required by his plea agreement. On February 3, 1992, Judge Cottingham issued an order affirming the August 9, 1990, consecutive sentence for conspiracy to traffic marijuana and divesting himself of jurisdiction over the matter.

A notice of appeal was timely filed and served on behalf of Petitioner by Mr. Rogers and Mr. Cox. A Transcript of Record was filed with the South Carolina Supreme Court on November 27, 1990. However, on April 12, 1991, Petitioner filed an affidavit requesting to withdraw his appeal, presumably because the imposition of the sentences was not final at that time. A subsequent notice of appeal was filed on February 11, 1992. J. Christopher Mills, Esquire, and Barbara Anne Leitner, Esquire perfected the appeal. The Supreme Court affirmed Petitioner's

convictions and sentences in a memorandum opinion. State v. Carpenter, Op. No. 94-MO-182 (S.C. S. Ct. filed July 15, 1994).

B. PCR Action 1993-CP-13-0255

While the direct appeal was pending, Petitioner filed a petition for writ of habeas corpus dated October 29, 1993. The State moved to construe the petition as a PCR and filed a motion to dismiss the petition. Judge Cottingham granted the motion to dismiss by order dated March 15, 1994.

Petitioner filed a second notice of appeal. Daniel T. Stacey, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court affirmed the dismissal and ruled that Petitioner was not entitled to relief.

C. PCR Action 1995-CP-13-0244

Next, Petitioner filed an application for post-conviction relief on December 22, 1995. He asserted the following issues:

1. State Grand Jury lacked subject matter jurisdiction;
2. Single conspiracy;
3. Double jeopardy; and
4. Ineffective assistance of counsel.

The State filed a Return and Motion to Dismiss dated March 15, 1996. Petitioner followed with amended applications dated January 26, 1999, and January 28, 1999. The first hearing was held before the Honorable James E. Lockemy on October 8, 1997. Petitioner was represented by Melvin Roberts, Esquire. At this hearing, Petitioner requested access to all State Grand Jury transcripts regarding his case, which the court granted. The next hearing took place on July 20, 1998, where Petitioner testified on his own behalf and where the State called Mr. Lofton. The hearing was continued until August 24, 1998, so that further transcripts could be obtained. Further testimony from Petitioner and Mr. Lofton was taken at the subsequent hearing. Another

hearing was held on January 26, 1999, to discuss various matters and to take more testimony from Petitioner.

On August 28, 1999, Judge Lockemy issued an Order of Dismissal rejecting all of Petitioner's claims. Mr. Roberts then filed a timely "Motion for Amendment to Judgment for a New Trial under Rule 52, SCRCF, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCF." The Statcd filed a return on October 7, 1999. A hearing was held on the motion on November 11, 1999. Judge Lockemy then issued an Order dated March 10, 2000, in which he held his original Order of Dismissal correctly disposed of the issues raised by Petitioner.

A notice of appeal from Judge Lockemy's Order was timely served and filed. Paul V. Cannarella, Esquire, represented Petitioner on appeal. On January 17, 2000, Mr. Cannarella filed a Petition for Writ of Certiorari, where he raised the following issues:

1. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the grounds of double jeopardy despite the fact that Petitioner was convicted of two counts of conspiracy where only one conspiracy occurred and in finding that trial counsel's failure to object on the ground of double jeopardy did not constitute ineffective assistance of counsel?
2. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that his guilty plea was not knowingly and voluntarily entered and in finding that counsel's failure to object to the unknowing and involuntary nature of the nature of the guilty plea did not constitute ineffective assistance of counsel?
3. Did the Circuit Court err in finding that counsel's failure to move to withdraw the guilty plea did not constitute ineffective assistance of counsel?
4. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that there was a lack of subject matter jurisdiction to defective indictments and in finding that counsel's failure to file any pre-trial motion to question the jurisdiction of the State Grand Jury did not constitute ineffective assistance of counsel?
5. Did the Circuit Court err in finding that Petitioner was not entitled to Post-Conviction Relief on the ground that Petitioner's sentence exceeds the sentence set out in the statute?
6. Did the Circuit Court err in finding that Petitioner was entitled to Post-Conviction Relief on the ground of the conditions of confinement and in finding that counsel's failure to investigate such did not constitute ineffective assistance of counsel?

The State filed a Return to the Petition for Writ of Certiorari dated April 18, 2001, and Petitioner followed with a Reply dated April 30, 2001. On December 13, 2001, the South Carolina Supreme Court denied certiorari, and the Remittitur was sent down on January 10, 2002.

D. Federal Habeas Corpus Petition

Petitioner then filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on November 12, 2002 (3:02-cv-3807-HMH). The State submitted a motion for summary judgment and memorandum in support on March 7, 2003. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant summary judgment dated October 6, 2003. On January 21, 2004, the Honorable Henry M. Herlong, Jr., United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Petitioner filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. By order filed July 1, 2004, the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

E. PCR Action 2008-CP-13-0281

Petitioner then filed a *third* application for post-conviction relief on July 3, 2008. The State filed a Return and Motion to Dismiss on October 24, 2008, requesting that the application be dismissed with prejudice because it was filed outside the statute of limitations and was successive to his previous applications. A hearing was convened at the Darlington County Courthouse on January 15, 2009, where Petitioner was present and represented by Tommy A. Thomas, Esquire. The State was represented by Karen C. Ratigan of the South Carolina Attorney General's Office. By order filed February 2, 2009, the Honorable John M. Milling dismissed

Petitioner's application with prejudice. A motion to alter or amend was filed on March 13, 2009, and an amended order of dismissal was filed on April 9, 2009.

A timely notice of appeal was filed. Mr. Thomas stayed on to represent Petitioner on appeal and filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 21, 2009. The State filed its Return on November 20, 2009. The Supreme Court denied the petition on September 23, 2010. The Remittitur was issued on October 12, 2010.

II. Discussion

In the matter currently before the Court, Petitioner has filed another Petition for Writ of Habeas Corpus against the State alleging that Judge Cottingham did not have jurisdiction or authority to impose a consecutive twenty-five (25) year sentence. Petitioner concludes that if the consecutive sentence was illegal, then he has completed service of his original twenty-five year sentence and is entitled to release.

Historically, a petition for a writ of habeas corpus was a common-law writ for relief and only available to attack the jurisdiction of the court who imposed the sentence. See Williams v. Ozmint, 380 S.C. 473, 476, 671 S.E.2d 600, 601 (2008) (citing Ex parte Klugh, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court whose judgment is challenged)). "The great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting Walker v. Wainwright, 390 U.S. 335, 336 (1968)). The enactment of the Uniform Post-Conviction Procedure Act², however, "drastically limited the availability of habeas corpus." Id. (citation omitted). Post-conviction relief was intended to include all "relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral attack under any

² S.C. Code Ann. §§ 17-27-10, et. seq. (2003).

common law, statutory or other writ, motion, petition, proceeding, or remedy.” See Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 430 (1998); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting post-conviction relief “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence”).

Regardless, the South Carolina Constitution provides for the possibility of habeas corpus relief. S.C. Const. Art. 1, § 18. “Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights. For these reasons, a defendant bears a much higher burden in a habeas proceeding.” Williams v. Ozmint, 380 S.C. at 477, 671 S.E.2d at 602. A writ of habeas corpus is reserved for only the most serious of constitutional violations which – in the setting – constitute a “denial of fundamental fairness shocking to the universal sense of justice.” Id. (citing Green v. Maynard, 349 S.C. 535, 538, 564 S.E.2d 83, 84 (2002)); see also Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). This Court has held, however, that not “every constitutional error at trial will justify issuance of the writ.” McWee v. State, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (quoting Green v. Maynard, 349 S.C. at 538, 564 S.E.2d at 84). This Court will grant a writ of habeas corpus only under “unique and compelling circumstances.” Id. Habeas corpus is available only when other remedies – such as post-conviction relief – are either inadequate or unavailable. See Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998)

A. Motion for Default is Denied

Petitioner filed a motion for default against the State on May 12, 2017. In the motion, Petitioner argues that the State did not file a timely answer to the complaint. This Court finds the State filed a timely responsive pleading addressing the full procedural issues and merits of the claims made by Petitioner. A return to a Petition for Writ of Habeas Corpus is an appropriate

responsive pleading. The State has defended this action since being joined and has filed a motion to dismiss and a thorough return to the Petitioner. This motion is denied.

B. This Action is Procedurally Barred

The State argues that this action is procedurally barred. This Court agrees. A state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998)³. Relief must be sought in the original jurisdiction of the South Carolina Supreme Court or in a successive PCR application filed in the appropriate county.⁴ Furthermore, “[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, 500 S.E.2d at 124. In fact, *any* matter that is cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Gibson, 495 S.E.2d 426; Keeler, 330 S.C. at 570, 500 S.E.2d at 124. The Uniform Post-Conviction Procedure Act is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, 495 S.E.2d at 428. A petitioner may allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler, 500 S.E.2d at 124.

Petitioner fails to meet the standards required for the issuance of this extraordinary writ. The Petition is improperly filed in the circuit court as it must be filed in the original jurisdiction

³ Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only be issued when there has been a constitutional violation “which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” Butler, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citing State v. Miller, 84 A.2d 459 (N.J. Super. Ct. App. Div. 1951)).

⁴ Petitioner’s underlying charges arise from Chesterfield County, not Richland.

of the Supreme Court. Furthermore, Petitioner made no allegations that PCR remedies have been exhausted or any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. The filing of a PCR application is the proper way to bring this action. The allegations that the trial court lacked jurisdiction to impose the sentence are explicitly covered by the PCR act. See S.C. Code Ann. § 17-27-20(A) ("Any person who has been convicted of, or sentenced for, a crime and who claims: . . . (2) That the court was without jurisdiction to impose the sentence."). Petitioner's other allegation that his sentence has expired is also explicitly covered by the PCR act. See S.C. Code Ann. § 17-27-20(A) ("(5) That his sentence has expired . . .").

Petitioner argues this argument was addressed by Judge Toal in her Order denying the motions to dismiss. That Order only ruled that Petitioner had made sufficient showing, in the light most favorable to him, that he had pled a cognizable claim under Rule 12(b), SCRCP. Petitioner then was able to see if he could meet his burden in proving his case under the applicable legal framework before this Court.

C. Merits

This Court further finds that even if it were to excuse the procedural bar, the Petition must fail on the merits. The trial court had proper jurisdiction to impose the sentences. Petitioner argues that the trial court did not have jurisdiction to impose a sentence on the trafficking in marijuana indictment. Specifically, Petitioner argues that he was sentenced to concurrent terms on June 4, 1990. This Court finds the trial court exercised proper jurisdiction over the case in deferring sentencing and imposing a consecutive twenty-five (25) year sentence. Furthermore, Petitioner has not made a sufficient showing that the alleged constitutional violations have denied him fundamental fairness that is shocking to the universal sense of justice.

An applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. The record completely refutes Petitioner’s claims that Judge Cottingham improperly deferred sentencing while retaining jurisdiction over the case.

The chief administrative judge for general sessions for the Fifth Judicial Circuit oversees the State Grand Jury and is referred to as the “presiding judge” throughout the State Grand Jury Act. S.C. Code Ann. § 14-7-1630(B). The presiding judge is responsible for the docket management of all criminal and civil proceedings arising out of the State Grand Jury including issues with subpoenas, the impanelment of the jurors, and the bond hearings for defendants indicted by the SGJ. The presiding judge also handles all of the administrative matters relating to the SGJ including issuance of orders, search warrants, and arrest warrants. Id. Once a defendant is indicted and after a venue order is entered, the Chief Justice of the Supreme Court assigns a judge to “take jurisdiction of and preside over all civil and criminal proceedings, with the exception of post-conviction relief matters, arising out of that investigation and set terms of court for the trial of these cases in the county where venue is set by the Presiding Judge of the State Grand Jury.” See Administrative Order State Grand Jury, S.C. Sup. Ct. Order dated March 20, 2003.⁵

In Petitioner’s case, venue was ordered in Chesterfield County. Judge Cottingham was assigned by the Chief Justice to preside over all cases arising out of the investigation. See Order,

⁵ This Order was issued after Petitioner had been sentenced, but these were the procedures in place at the time. The Supreme Court issued an order that “the Honorable Edward B. Cottingham, be, and he hereby is, vested with concurrent jurisdiction in all circuits of the state to dispose of all common pleas and general sessions matters, including trials by jury, arising from State Grand Jury Investigation No. 89-005.” S. Ct. Order issued November 15, 1989.

S.C. Sup. Ct. Order dated November 15, 1989. With that order, Judge Cottingham had jurisdiction over Petitioner's case along with his codefendants' cases. This allowed Judge Cottingham to get a full picture of the investigation and the allegations set forth in the indictments. Judge Cottingham had the authority to manage Petitioner's case as he saw fit. The trial court was not limited in its jurisdiction as it may have been if Judge Cottingham had been assigned a specific weekly term of court because he was vested with continuing jurisdiction over the case, unique to SGJ cases.

Petitioner further argues that Judge Cottingham was without authority to defer sentencing. Since there was clearly continuing jurisdiction over Petitioner's case, the question turns to whether Judge Cottingham properly deferred sentencing. "Judgment in a criminal case is not final until sentence is imposed." State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985). Here, Petitioner's sentence was not final until he was sentenced on the trafficking in marijuana charge. That sentence was imposed on August 9, 1990, as evidenced by the sentencing sheet. Judge Cottingham was well within his authority to defer sentencing and to provide Petitioner an opportunity to cooperate as set forth in the plea agreement. It is important to note that while Petitioner argues Judge Cottingham was without subject matter jurisdiction, the question is really whether Judge Cottingham had the power to act in a particular manner. See State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008) (distinguishing jurisdiction from subject matter jurisdiction and explaining that a trial judge is without the power to act under the general rule despite the existence of subject matter jurisdiction).

Petitioner further argues that for Judge Cottingham to have proper jurisdiction over the August 9, 1990 hearing there must have been a specific order assigning special jurisdiction. Absent the supreme court order assigning jurisdiction over the SGJ case to Judge Cottingham,

Petitioner was unable to produce any other records to support his argument that the court was without authority to impose the consecutive sentence. This Court will not speculate as to the existence or nonexistence of any other orders. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). It is incumbent upon one who challenges a proceeding to prove his claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001). Petitioner has failed to show that any irregularities occurred. It is clear that the August 9, 1990 hearing was scheduled by Judge Cottingham. Both parties and the attorneys, a clerk of court, and a court reporter were present. This Court finds it difficult to fathom that Judge Cottingham was operating without jurisdiction and without authority from the supreme court to impose a sentence on the second count of the indictment.

Petitioner further argues that his sentence has expired. This is based on the faulty assumption that he was sentenced to concurrent terms of twenty-five (25) years' imprisonment. The comprehensive record shows that Petitioner was sentenced to *consecutive* terms of twenty-five (25) years' imprisonment. If this Court were to find that the trial court did not have jurisdiction, then a sentence would not have been imposed on the trafficking marijuana indictment. This would not require release and could possibly require a remand to have that sentence imposed.

III. Conclusion

Finally, the Court dismisses this action and denies relief. While the action is procedurally barred, a thorough analysis of the allegations shows that the action is without merit. Judge Cottingham exercised appropriate authority and jurisdiction over the same and imposed a consecutive twenty-five year sentence. While the Court recognizes Petitioner was sentenced to a

ROA 0474
significant term of imprisonment, it was a sentence Petitioner was statutorily eligible for and Judge Cottingham possessed the discretion to run the sentences consecutively. Thus, it is clear that Petitioner's constitutional rights are not being violated and that he is being held by SCDC lawfully.

IT IS THEREFORE ORDERED THAT:

1. The Petitioner for Writ of Habeas Corpus is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of Sept, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

The State of South Carolina,

Defendant.

ROA 0475
IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-40-6916

**ORDER
DENYING PLAINTIFF'S MOTION TO
RECONSIDER**

RICHLAND COUNTY
FILED
2017 DEC 18 AM 11:15
JENNIFER W. HERNANDEZ
C.C.P. & G.S.

THIS MATTER came before the Court on May 18, 2017. The Court filed the Order Dismissing Petition for Writ of Habeas Corpus on October 2, 2017. The Defendant was represented by Desa Ballard, Esquire, and the State was represented by Clay Mitchell, Esquire.

Thereafter, the Plaintiff filed a Motion to Reconsider on October 5, 2017. Both Defendants responded to the Motion.

After a review of the pleadings, and the motion and arguments therein being duly noted, the Plaintiff's Motion is hereby **DENIED**.

IT IS SO ORDERED this day ^{Dec}18 of October, 2017.

R. Hood

The Honorable Robert E. Hood
Presiding Judge

ROA 0475

ROA 0476

Attachment 2: Transcript of Record - April 7, 1990

ROA 0476

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

COURT OF GENERAL SESSIONS

THE STATE

-vs-

CHARLES EUGENE CARPENTER, a/k/a
"FIREBALL"

TRANSCRIPT OF RECORD
(Guilty Plea)

April 7, 1990
Bennettsville, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge.

A P P E A R A N C E S:

A. SEAN KITTRELL, Deputy Attorney General
State Grand Jury Section
Appearing for the State

LIONEL S. LOFTON, ESQUIRE
Appearing for the Defendant

DEBORAH G. MORRIS
Court Reporter

1 MR. KITTRELL: Your Honor, this is The State of South
2 Carolina vs. Charles Eugene Carpenter, also known as "Fireball."
3 This is in reference to Indictment No. 90-GS-47-05001 and
4 90-GS-47-05002.

5 Your Honor, the Defendant is entering a plea of guilty.

6 THE COURT: One minute. All right, go ahead.

7 MR. KITTRELL: The Defendant is entering a plea of
8 guilty as to two of the counts, i.e., Count One of each
9 separate indictment.

10 THE COURT: All right, Count One of the 01 indictment
11 says "conspiracy to traffic in marijuana"?

12 MR. KITTRELL: Yes, sir, it is a trafficking charge
13 under Section 44-53-370(e)(2)(e). That is under the mari-
14 juana indictment, Your Honor.

15 THE COURT: Under Count One I am showing as a conspiracy
16 trafficking in marijuana.

17 MR. KITTRELL: No, sir, (e)(1)(d), I'm sorry.

18 THE COURT: Am I right?

19 MR. LOFTON: That's correct, Your Honor. That is
20 under the 01 indictment.

21 THE COURT: All right, sir, now, go ahead.

22 MR. KITTRELL: And he is also pleading guilty to Count
23 One of the second indictment, which is 90-GS-47-05002.

24 THE COURT: All right, sir.

25 MR. KITTRELL: Your Honor, a plea agreement has been

1 entered into and signed by the Defendant, his attorney and
2 myself on behalf of the State.

3 Your Honor, the agreement sets out the terms of this
4 plea and the State will recommend that the Court impose a
5 sentence of 25 years and that the sentence be as to each
6 count and that each count be run concurrent each to the
7 other.

8 At the sentencing, Your Honor, the State will dismiss
9 the remaining two counts that are outstanding against this
10 Defendant, which is Count Two of each indictment.

11 THE COURT: Your recommendation, then, under the plea
12 agreement is 25 years upon each count, concurrent.

13 MR. KITTRELL: Yes, sir, Your Honor. Of course, if
14 there are any other -- We will do concurrent as to other
15 charges which the Defendant has been found guilty of,
16 specifically speaking of a North Carolina conviction.

17 MR. LOFTON: What we are saying, Your Honor, as a plea
18 bargain that the sentence will be deferred until he is
19 sentenced in North Carolina on the case he has been convicted
20 on up there, and that when the sentence is imposed here the
21 recommendation will be that the time here, the 25 years, will
22 also be concurrent with the North Carolina case.

23 THE COURT: Is that your understanding of the recommen-
24 dation?

25 MR. KITTRELL: Yes, sir.

1 THE COURT: All right, sir.

2 MR. KITTRELL: Your Honor, the plea agreement sets
3 out the terms that were discussed. The Defendant is to
4 fully and truthfully cooperate with law enforcement agents
5 of the State of South Carolina to help them further investi-
6 gate the trafficking of illegal substances and distribution
7 of illegal activities, the distribution of illegal drugs.
8 There is supposed to be complete cooperation. Paragraph (2)
9 of the agreement sets out the terms of the Defendant's
10 cooperation. This also requires the Defendant be available
11 and truthfully testify before any grand jury or any trials
12 or any proceedings, be it civil or criminal. The Defendant
13 has to perform this as an absolute obligation. If he fails
14 to do so, then the plea agreement is revoked.

15 Your Honor, the Defendant also agrees and has agreed
16 and understands that he is to forfeit all assets which were
17 obtained or acquired as a result of illegal trafficking in
18 drugs. These are to be surrendered to SLED and/or other
19 law enforcement organizations in South Carolina. Of course,
20 these assets will be disposed of pursuant to the forfeiture
21 statute.

22 THE COURT: All right, sir.

23 MR. KITTRELL: That is contained in Paragraph (3), Your
24 Honor, and there are many more divisions there, but that is
25 the essence of that.

1 Your Honor, the Defendant also agrees to submit to
2 polygraph examinations. He must obviously successfully
3 complete those examinations, if given. My understanding
4 is that they will be given. The Defendant must successfully
5 complete the examinations in order to fulfill his obligations
6 under this agreement.

7 Your Honor, the State will not prosecute Mr. Carpenter
8 for other offenses which were submitted prior to this date,
9 the date of this agreement, and which have occurred in the
10 time frame noted in Counts One of both indictments.

11 THE COURT: Your agreement doesn't relate to any
12 possible other pending federal charge, you would have no
13 jurisdiction with regard to that.

14 MR. KITTRELL: No, Your Honor, but I would agree to
15 recommend to the United States Attorney or other prosecuting
16 officers in other jurisdictions that this agreement encompass
17 all charges which may be brought against him.

18 THE COURT: Everybody understand, though, that they nor
19 you or this Court are bound by what some other authority
20 might do, you understand that?

21 MR. LOFTON: Yes, Your Honor, we understand he has no
22 jurisdiction over the federal authorities.

23 THE COURT: Yes, sir. All right, is there any further
24 matters in there?

25 MR. KITTRELL: Your Honor, the rest of the agreement

1 is contained in the document itself. I think there may be
2 some other matters which are going to be placed on the
3 record or have been placed on the record, and those are
4 merged into this agreement as well.

5 THE COURT: We will go into the details of that in a
6 moment. Now, Mr. Lofton, you, of course, represent this
7 Defendant?

8 MR. LOFTON: That's correct, Your Honor.

9 THE COURT: And have represented him throughout these
10 proceedings?

11 MR. LOFTON: That's correct.

12 THE COURT: And are his retained counsel?

13 MR. LOFTON: That's correct.

14 THE COURT: I say this, I don't ask you to agree to
15 it, but you are an eminent member of the Charleston County
16 Bar and have practiced in this state for a number of years
17 and a former Assistant United States District Attorney,
18 were you not?

19 MR. LOFTON: That's correct, Your Honor.

20 THE COURT: I just want the record to reflect your
21 capabilities in the representation of Mr. Carpenter. This
22 agreement I hold in my hand designated as a plea agreement
23 purports to be signed by you, as his attorney, and him.
24 Have you executed this agreement?

25 MR. LOFTON: Yes, sir, I have, and so has he, Your

1 Honor.

2 THE COURT: Have you explained this agreement to him?

3 MR. LOFTON: We have gone over it in toto.

4 THE COURT: And he has had an opportunity to read it
5 and to ask you any questions about it?

6 MR. LOFTON: That's correct.

7 THE COURT: As his attorney, can you tell me that this
8 agreement is freely and voluntarily entered into?

9 MR. LOFTON: That's correct, Your Honor.

10 THE COURT: Without any coercion or duress of any
11 kind?

12 MR. LOFTON: That's correct, Your Honor.

13 THE COURT: Without any other promises other than those
14 as are contained in this written agreement?

15 MR. LOFTON: That's correct, Your Honor. Let me
16 clarify one thing. This is what Mr. Kittrell alluded to
17 a moment ago.

18 THE COURT: All right, let's do that, please.

19 MR. LOFTON: Even though this is not an agreement
20 between Mr. Kittrell and myself, as part of the inducement
21 for Mr. Carpenter to enter a plea of guilty, I did certain
22 things concerning other charges that I have advised him of
23 that I would like to just place on the record so the record
24 will be complete because he was aware of those at the time
25 he signed that plea agreement.

1 THE COURT: I don't know exactly what you are referring
2 to, but you can put it on the record and I will respond, if
3 necessary.

4 MR. LOFTON: There is a pending charge in the United
5 States District Court for the District of South Carolina,
6 Florence Division, dealing with a firearm, which the United
7 States Attorney has agreed to dismiss provided Mr. Carpenter
8 complies with the terms and conditions of his plea agreement
9 in this court.

10 Additionally, there is a pending charge in Richland
11 County, which the Solicitor there has agreed to dismiss
12 provided Mr. Carpenter complies with the terms and conditions.

13 THE COURT: I want to make sure we don't have a condi-
14 tional plea here. You are just saying that he has entered
15 into it and you've got these things out there, but I am not
16 hearing a conditional plea, now.

17 MR. LOFTON: It is not a conditional plea, but, Your
18 Honor, from the standpoint of inducements I think it is
19 important that these were considerations that were given to
20 him when he entered his plea.

21 THE COURT: As long as it is not a conditional plea.

22 MR. LOFTON: No, sir, it is not a conditional plea.

23 MR. KITTRELL: If I could state one thing for the
24 record. My understanding is that Mr. Lofton has been talking
25 to other law enforcement agencies. That has nothing to do

1 with these charges here. I have no objection to those
2 activities which he has undertaken. I do not mind him dis-
3 cussing with other law enforcement agencies pending charges
4 against Mr. Carpenter. Again, whether he achieves that
5 result or not has nothing to do with this agreement, and
6 that is my understanding.

7 THE COURT: I am taking the plea on that basis. The
8 plea agreement has nothing to do with whether you are success-
9 ful or not, you are just reciting this to show that those
10 efforts are also pending out there.

11 MR. LOFTON: That's correct, Your Honor, but those are
12 things that he took into consideration to enter this plea,
13 and that is important.

14 THE COURT: I understand. But he understands that this
15 Court can't guarantee that, nor does the Attorney General's
16 Office.

17 MR. LOFTON: He understands that.

18 THE COURT: Do you understand that, Mr. Carpenter?

19 MR. CARPENTER: Yes, sir, I do.

20 THE COURT: All right.

21 MR. LOFTON: And then the final thing, of course, the
22 Solicitor is here, Your Honor, there are burglary and kid-
23 napping charges pending here in Malboro County, which the
24 Solicitor agreed to dismiss.

25 THE COURT: Well, he is standing here and he can

1 certainly say that as to that.

2 MR. McBRIDE: That's correct, Your Honor.

3 THE COURT: There is no question about it, he has
4 stated that, but as to the other I am accepting that as
5 information only so that the record will reflect that you,
6 as his attorney, has explained to your client that you've
7 got these actions out there. You may or may not be success-
8 ful.

9 MR. LOFTON: I understand, Your Honor.

10 THE COURT: And as long as he understands, that is
11 fine. Now, Mr. Carpenter?

12 MR. CARPENTER: Yes, sir.

13 THE COURT: Your attorney tells me that you freely
14 and voluntarily entered into this plea agreement?

15 MR. CARPENTER: Yes, sir.

16 THE COURT: He tells me that you understand it, is
17 that correct?

18 MR. CARPENTER: (Nods affirmatively.)

19 THE COURT: Now, I tell you that this Court will abide
20 by this plea agreement. I tell you that upon the record.

21 MR. CARPENTER: Yes, sir.

22 THE COURT: But I also tell you upon the record, and
23 let there be no question about it, that this Court will fully
24 expect you in every---

25 MR. CARPENTER: Yes, sir.

1 THE COURT: ---detail and in every particular to abide
2 by that which you have agreed to do.

3 MR. CARPENTER: Yes, sir.

4 THE COURT: If I conclude upon proper presentation
5 that you have not done so, then this plea agreement to you
6 and to me is void and of no effect. Do you understand that?

7 MR. CARPENTER: Yes, sir, I do.

8 THE COURT: I am sure you have explained that to him.

9 MR. LOFTON: We have been over that fully, yes, Your
10 Honor.

11 THE COURT: Now, you are pleading to those counts in
12 these indictments as have been enumerated by the representa-
13 tive of the Attorney General's Office, do you understand
14 that?

15 MR. CARPENTER: Yes, sir, I do.

16 THE COURT: Your attorney, for the record, has stated
17 that he has certain ongoing negotiations relative to other
18 charges that he talked to you about. Now, I want to tell
19 you, though, that the Attorney General nor myself has any
20 authority over those matters. Do you understand that?

21 MR. CARPENTER: Yes, sir, I do.

22 THE COURT: And that is something that your attorney
23 needs to work out, if he can, but I am not dealing with
24 that. I have no authority to deal with that. I am not
25 accepting a conditional plea with regards to what happens

1 there. I would not want you to think that. In the event
2 one of those eventualities do not occur and you come back
3 and say, "Well, Judge, I wouldn't have pled at all had I
4 known that wasn't going to happen."

5 MR. CARPENTER: Yes, sir, I understand.

6 THE COURT: He is just saying to you that he's got that
7 hoping that he can work it out. It has nothing to do with
8 my and your understanding here, though.

9 MR. CARPENTER: Yes, sir.

10 THE COURT: And you have explained that to him, Mr.
11 Lofton?

12 MR. LOFTON: Yes, sir, I explained it to him.

13 THE COURT: All right, sir. And are you satisfied
14 that the record is clear with regards to that, Solicitor?

15 MR. KITTRELL: Yes, Your Honor.

16 THE COURT: Now, Mr. Lofton, in your opinion does
17 your client now understand the charges to which he pleads,
18 the possible punishment and the constitutional rights?

19 MR. LOFTON: Yes, he does, Your Honor.

20 THE COURT: How does he indicate to you that he desires
21 to plead to Count One of the first indictment?

22 MR. LOFTON: Guilty, Your Honor.

23 THE COURT: And how does he indicate that he desires
24 to plead to Count One of the second indictment?

25 MR. LOFTON: Guilty also.

1 THE COURT: And does he understand the meaning and
2 the efficacy of the plea that he has entered into with
3 regards to sentence?

4 MR. LOFTON: Yes, Your Honor.

5 THE COURT: And as I understand it the understanding
6 is it is 25 years concurrent?

7 MR. LOFTON: That's correct.

8 THE COURT: Now, I want to make sure that there is no
9 other considerations out there that he thinks are out there
10 that are not out there.

11 MR. LOFTON: That is the considerations, Your Honor.

12 THE COURT: There is none other, all right. Now, Mr.
13 Carpenter, how old are you, please?

14 MR. CARPENTER: Thirty-six.

15 THE COURT: What education do you have?

16 MR. CARPENTER: Two years of college.

17 THE COURT: Two years of college. All right, sir.

18 Then you heard your attorney state that you have been advised
19 of the charges contained in these two counts to which you
20 tender a plea, is that correct?

21 MR. CARPENTER: Yes, sir, that's correct.

22 THE COURT: Now, are you guilty of these charges?

23 MR. CARPENTER: Yes, sir.

24 THE COURT: And are these pleas freely and voluntarily
25 entered into?

1 MR. CARPENTER: Yes, sir.

2 THE COURT: Without force, duress or coercion?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: Now, Mr. Carpenter, you are well aware,
5 of course, that these charges were to be tried by a jury
6 of your peers beginning Monday morning in Chesterfield,
7 South Carolina. Do you understand that?

8 MR. CARPENTER: Yes, sir.

9 THE COURT: You still have that absolute right to that
10 trial by that jury. Do you understand that?

11 MR. CARPENTER: I understand that.

12 THE COURT: If we convene that jury on Monday morning,
13 you and your attorney would have an opportunity to voir dire,
14 that is, to question the jury as to assure yourselves of
15 their impartiality. Do you understand that?

16 MR. CARPENTER: Yes, sir.

17 THE COURT: If a jury was convened, I would instruct
18 them that you and everyone else are presumed innocent, and
19 that presumption of innocence remains with you throughout
20 the trial and until the jury has upon evidence to their
21 satisfaction beyond a reasonable doubt unanimously found
22 you guilty. Do you understand that?

23 MR. CARPENTER: Yes, sir.

24 THE COURT: If you chose to testify, you would have
25 that absolute right. Do you understand that?

1 MR. CARPENTER: Yes, sir.

2 THE COURT: If you chose to remain silent, I would
3 explain to the jury that you are presumed innocent, you
4 don't have to prove a thing, the burden is on the State.
5 I would explain to the jury that your silence could not and
6 must not be used against you. Do you understand that?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: I wanted this record to abundantly reflect
9 that you are absolutely entitled to trial by jury and we
10 will give you one starting Monday morning at 10 a.m. in
11 Chesterfield, South Carolina. Do you understand that?

12 MR. CARPENTER: Yes, sir.

13 THE COURT: You are represented by a distinguished
14 attorney of the South Carolina Bar with many years experience
15 in matters of these kind. Now, I want to know, he is
16 your retained counsel?

17 MR. CARPENTER: Yes, sir.

18 THE COURT: Has been your retained counsel for what,
19 two or three months or more?

20 MR. CARPENTER: Yes, sir.

21 MR. LOFTON: Since early December or late November,
22 Your Honor.

23 THE COURT: And you have been in custody, as I under-
24 stand it?

25 MR. CARPENTER: Yes, sir.

1 THE COURT: I have tried to make him available to you
2 at all times. Has that been done?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: Has he made available to you for your
5 perusal the various documentation that the State had,
6 including the grand jury reports?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: Have you had an ample opportunity to go
9 over the purported evidence against you in these various
10 charges?

11 MR. CARPENTER: Yes, sir.

12 THE COURT: Have you had a full and complete opportunity
13 to discuss all of these matters with Mr. Lofton?

14 MR. CARPENTER: Yes, sir.

15 THE COURT: Is there anything else that you wish Mr.
16 Lofton to do or to consult with you before I proceed in
17 the matter?

18 MR. CARPENTER: No, sir.

19 THE COURT: Are you satisfied with his services?

20 MR. CARPENTER: Absolutely.

21 THE COURT: Now, I can promise you, nearly, that
22 within the next several years somebody in the penal system
23 is going to suggest to you that you file a post conviction
24 relief wherein you are going to allege that he was totally
25 inept in some particular. I can assure you, reasonably

1 certain that that is going to happen. Now, if there is
2 any area that you think this lawyer is deficient in, I would
3 like to hear it now so I can discuss it with you.

4 MR. CARPENTER: No, sir, I can't think of nothing now.

5 THE COURT: You are telling me you are satisfied with
6 his services?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: He has made himself available to you,
9 even though you have been incarcerated?

10 MR. CARPENTER: Yes, sir.

11 THE COURT: Now, Mr. Carpenter, I want to make sure
12 that you have no complaints about anything anybody did to
13 you or failed to do for you, including the law enforcement
14 officers of the county, the state involved, or what not.
15 Has anybody mistreated you in any way? I want to know about
16 it right now.

17 MR. CARPENTER: Yes, sir, I understand.

18 THE COURT: Sir?

19 MR. CARPENTER: Yes, sir.

20 THE COURT: Now, are you today under the influence of
21 alcohol or drugs or mind altering drugs, liquor of any kind?

22 MR. CARPENTER: No, sir.

23 THE COURT: Is your mind free and clear? Do you under-
24 stand what we are doing?

25 MR. CARPENTER: Yes, sir.

1 THE COURT: You understand the nature of the charges
2 against you?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: You understand the consequences of your
5 plea?

6 MR. CARPENTER: Yes, sir.

7 THE COURT: You fully understand your constitutional
8 rights of trial by jury?

9 MR. CARPENTER: Yes, sir.

10 THE COURT: And you are telling me that you desire to
11 go forward, that you have discussed it with your lawyer,
12 you are satisfied with his services?

13 MR. CARPENTER: Yes, sir.

14 THE COURT: I want to make sure too, Mr. Carpenter,
15 that your plea is freely and voluntarily entered into.

16 MR. CARPENTER: Yes, sir.

17 THE COURT: I want to make absolutely sure now that
18 no one whatsoever has coerced you or threatened you in any
19 way to get you to plead guilty.

20 MR. CARPENTER: Yes, sir.

21 THE COURT: Sir?

22 MR. CARPENTER: No, sir, I mean, free.

23 THE COURT: There are no threats out there or---

24 MR. CARPENTER: No, sir.

25 THE COURT: Is there anything further you wish to say

1 at this time before I accept your plea?

2 MR. CARPENTER: No, sir.

3 THE COURT: Mr. Carpenter, having discussed the matter
4 with you and your attorney and having had now an opportunity
5 to review your demeanor and your quite candid responses to
6 my inquiry, I would conclude beyond a reasonable doubt that
7 you have had the advice and counsel of a competent attorney
8 with whom you are satisfied. I find beyond any doubt that
9 he has represented you well, as he always would, that you
10 have had an ample opportunity to talk to him to prepare your
11 case. Your responses indicate to me clearly that your actions
12 in, one, the plea agreement, and in pleading guilty, is
13 freely and voluntarily made. There is no suggestion whatso-
14 ever of any force or threat as against you. I find that
15 you have no complaints against the law enforcement officers,
16 having availed you of the opportunity to express them, and
17 I do so again. Clearly you are an intelligent young man
18 with two years of college. You fully understand your consti-
19 tutional rights of trial by jury and otherwise.

20 MR. CARPENTER: Yes, sir.

21 THE COURT: I find that your decision is freely and
22 voluntarily made, that it is your decision, and I find
23 beyond any reasonable doubt that it is proper, then, that
24 I accept the plea as tendered to the Court by you through
25 your attorney, and I do so at this time, making the plea

1 agreement a part and parcel of this record.

2 MR. KITTRELL: If I could also ask that the Defendant
3 understand that this is a mandatory term of imprisonment,
4 that it is a mandatory minimum, the sentence cannot be
5 suspended, probation can't be granted and it is a sentence
6 that does not have any eligibility for parole until the
7 passage of 25 years.

8 THE COURT: I am sure Mr. Lofton has explained that
9 to him.

10 MR. LOFTON: We went over that in great detail and he
11 fully understands the ramifications.

12 THE COURT: Yes, sir, and he has indicated to me that
13 he understands it, and I have told him, and I do so upon
14 this record, that I am going to abide by the plea agreement.
15 He is entitled to that too, and I will do that. You don't
16 have any problems with that, I take it, Mr. Kittrell?

17 MR. KITTRELL: Not at all, Your Honor.

18 THE COURT: I didn't think you did. No, sir, he has
19 entered into it in good faith and his lawyer has, and I
20 am going to accept it.

21 MR. CARPENTER: Thank you.

22 (WHEREUPON, the hearing was adjourned.)

23
24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
25

CERTIFICATE

I, the undersigned Deborah G. Morris, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the guilty plea of the captioned cause, relative to appeal, in the Criminal Court for Chesterfield County, South Carolina, on the 7th day(s) of April, 1990.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 24, 1990.
Deborah G. Morris
Court Reporter