

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2016-CP-40-6916
Appellate Case No. 2017-002577

RECEIVED
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SC Court of Appeals

Charles Eugene Carpenter,.....Appellant,

v.

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

RECORD ON APPEAL
VOLUME II OF III

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Certificate of Counsel

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Attachment 3: Transcript of Record - June 4, 1990

ROA 0498

1 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

2 COUNTY OF DILLON

3
4 STATE)

5 vs.)

TRANSCRIPT OF RECORD

90-GS-47-05001

6 CHARLES EUGENE CARPENTER)

90-GS-47-05002

7
8 June 4, 1990

Dillon, South Carolina

9
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
21 TIMOTHY F. ROGERS, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT

23
24 MICHAEL COX, ESQUIRE
25 ATTORNEY FOR THE DEFENDANT

Patricia S. Dial
Court Reporter

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SF-AZ-13

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."

ROA 0502

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

ROA 0502

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

ROA 0512

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

ROA 0512

ROA 0513

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

ROA 0513

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.

ROA 0515

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,

ROA 0515

ROA 0516

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

ROA 0516

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

ROA 0518

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

ROA 0518

ROA 0519

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

ROA 0519

ROA 0520

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

ROA 0520

ROA 0521

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

ROA 0521

ROA 0522

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

ROA 0522

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

ROA 0524

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 --

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ROA 0524

ROA 0525

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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ROA 0525

CERTIFICATE

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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
Patricia S. Dial
Court Reporter

Patricia S. Dial
Copy - August 3, 1990

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ROA 0528

ROA 0528

ROA 0529

(WHEREUPON THE FOLLOWING MATTERS WERE HEARD
AUGUST 9, 1990, BEFORE HONORABLE EDWARD B. COTTINGHAM.)

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

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

Mr. Kittrell: Yes, sir.

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

Mr. Lofton: Yes, sir.

Mr. Rogers: That is correct.

Court: All right, let the record reflect that

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ROA 0529

ROA 0530

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

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ROA 0530

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

ROA 0532

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.

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ROA 0532

ROA 0533

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

ROA 0534

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

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ROA 0534

ROA 0535

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

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ROA 0535

ROA 0536

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

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ROA 0536

ROA 0537

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.

ROA 0537

ROA 0538

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

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ROA 0538

ROA 0539

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

ROA 0540

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

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ROA 0540

ROA 0541

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

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

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

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

Mr. Kittrell: Eddie Gordon.

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

DIRECT EXAMINATION BY MR. KITTRELL:

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

A My name is Eddie Gordon.

Q Eddie Gordon, where do you work?

A I work with the Governor's Raid Team.

Q How long have you worked there?

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

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

A I was a State Highway Patrolman for 21 of those

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ROA 0541

ROA 0542

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?

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ROA 0542

ROA 0543

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

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ROA 0543

ROA 0544

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

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ROA 0544

ROA 0545

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

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ROA 0545

ROA 0546

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,

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ROA 0547

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

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ROA 0548

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

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ROA 0549

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

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ROA 0550

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

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ROA 0551

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

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ROA 0552

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

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ROA 0553

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

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ROA 0554

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,

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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?

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ROA 0555

ROA 0556

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

///
ROA 0556

ROA 0557

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.

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ROA 0557

ROA 0558

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?

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ROA 0558

ROA 0559

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?

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ROA 0559

ROA 0560

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

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ROA 0560

ROA 0561

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

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ROA 0561

ROA 0562

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 going to 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

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ROA 0562

ROA 0563

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

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ROA 0563

ROA 0564

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?

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ROA 0564

ROA 0565

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.

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ROA 0565

ROA 0566

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?

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ROA 0567

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

ROA 0568

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

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ROA 0569

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

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ROA 0570

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

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ROA 0571

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.

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ROA 0572

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

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ROA 0573

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

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ROA 0574

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,

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ROA 0575

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.

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ROA 0575

ROA 0576

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?

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ROA 0577

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

ROA 0577

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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

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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

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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.

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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

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ROA 0582

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

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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

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ROA 0584

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

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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

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ROA 0586

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

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ROA 0587

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.

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ROA 0587

ROA 0588

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

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ROA 0589

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.

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ROA 0589

ROA 0590

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?

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ROA 0590

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

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ROA 0592

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

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ROA 0592

ROA 0593

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

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ROA 0593

transaction that Charles Carpenter was involved in, isn't that correct?

A Nobody but Pee Wee and Charles Carpenter, that is correct.

Q All right. And you don't know whether Mr. Carpenter was deceptive on that particular issue or not, is the point I'm trying to make.

Mr. Kittrell: Your Honor, he doesn't know what questions were asked in regard to specifics in the polygraph. The polygraph is certainly irrelevant. There are 97 witnesses involved who were gonna testify at trial. Not everybody can be polygraphed. The polygraph is only an investigatory tool.

Court: You gentlemen need to understand that I've been around the courtroom a number of years myself and a jury is not here. And I'm going to permit some wide latitude for both of you to have your position fully on this record. Go ahead. I understand what you're saying, but given the fact that this is a non-jury proceeding, I'm not gone be as technical as I ordinarily would. Proceed, Mr. Lofton.

Q Moving from the van to the Blazer, Mr. Gordon, the information furnished to you concerning this blazer being involved in some illegal drug trafficking was furnished by whom?

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ROA 0594

ROA 0595

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

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ROA 0595

ROA 0596

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.

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ROA 0596

ROA 0597

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

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ROA 0597

ROA 0598

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

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ROA 0598

ROA 0599

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

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ROA 0599

ROA 0600

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.

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ROA 0600

ROA 0601

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?

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ROA 0601

ROA 0602

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.

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ROA 0602

ROA 0603

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

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ROA 0603

ROA 0604

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

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ROA 0604

ROA 0605

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.

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ROA 0605

ROA 0606

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

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ROA 0606

ROA 0607

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

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ROA 0607

ROA 0608

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

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ROA 0608

ROA 0609

way to have the witnesses testify?

Mr. Kittrell: They will testify, Your Honor, but I want to make those statements a part of the record.

Mr. Lofton: Your Honor, they are not affidavits. They are statements. They are interview statements, taken by some agent. They are not the witness' testimony.

Court: Well, I'd rather take the live testimony if they're here.

Mr. Kittrell: By the same token the statement he gave you was what Carpenter gave to our office. By the same token, if he's introducing that we can introduce our statement. If not, then his ---

Court: No, sir. No, sir. I'm going to permit this, but I'm not going to permit yours at this time. I may later after I hear the live testimony. You understand?

Mr. Kittrell: All right, sir.

Court: I'm not precluding that, but this is totally two different issues and I'm gone let him proceed and I'll rule on yours at the time. We keep talking about these statements. I want to make sure that the authors of those statements are here to testify.

Mr. Kittrell: They are, Your Honor.

Court: All right, that's fine.

(INTERVIEW & POLYGRAPH EXAM ENTERED IN EVIDENCE

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ROA 0609

ROA 0610

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?

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ROA 0610

ROA 0611

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 RE CROSS 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

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ROA 0611

ROA 0612

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?

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ROA 0612

ROA 0613

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.

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ROA 0613

ROA 0614

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?

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ROA 0614

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?

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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.

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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?

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.

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ROA 0620

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.

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ROA 0620

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.

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

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.

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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?

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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?

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

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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

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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.

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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.

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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?

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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?

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ROA 0633

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.

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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.

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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.

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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

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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

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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?

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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?

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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?

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A Basically, yes, sir.

Q Okay. And then, at some other point in time, Mr. Carpenter told you that if he knew way back when, months ago, what he knew today, that he might have killed you when he had a chance?

A Right.

Q He didn't say anything about trying to kill you now?

A No, not at that point in time.

Q And what happened in that jail was, you threatening him and him threatening you?

A Basically, yes, sir.

Q Thank you, sir.

Court: Anything further?

Mr. Kittrell: Nothing from the State, Your Honor. Your Honor, the State has no other witnesses to offer at this time.

Court: All right, sir. For the defense.

Mr. Lofton: Your Honor, could we have about five minutes to determine whether or not we want to call any witnesses?

Court: Yes, sir, we'll do that.

(WHEREUPON A BREAK WAS TAKEN BY THE COURT.)

Court: All right, sir.

Mr. Lofton: If the Court please, Your Honor,

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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.

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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

ROA 0645

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?

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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?

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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.

ROA 0648

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

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ROA 0649

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

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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 The State of South Carolina had you indicted
7 upon, really, four separate counts and under that they had
8 permitted you to plead guilty to two, which you did, and
9 said that they would recommend concurrent sentences, if
10 you did certain things.

11 I've read the transcript of that proceeding here
12 this morning, and in addition to giving you that benefit
13 they also dropped some charges pending in Richland County,
14 agreed to let your attorney work out a gun charge in
15 Florence County, and the solicitor agreed to dismiss, as I
16 remember, a kidnapping and burglary charge in Marlboro.
17 So the State of South Carolina, pursuant to that plea
18 agreement, did some significant things for you.

19 I've listened to the testimony here and I
20 conclude that you have not complied with your plea
21 agreement. The evidence, to me, is overwhelming and as I
22 listened to the testimony of Mr. Gordon here, and I think
23 he's a reasonable person, listening to his testimony and
24 would conclude that. Now, beyond your failure to
25 cooperate as a result of the plea agreement that you

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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.

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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.

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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

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,

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

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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.

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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

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

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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

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

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.

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,

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

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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

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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 ---

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

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 Mr. Rogers: Your Honor, I was going to inquire
3 of the Court, with reference to the thirty-day extension,
4 or not extension but period of time within which you would
5 agree to entertain those motions.

6 Court: Now, let me get this clear. The hearing
7 is over now.

8 Mr. Rogers: I understand that. But, Your Honor,
9 I think a little bit of clarification on that, really on
10 two points. I understand you don't want to have the
11 hearing over. I would hope that on the basis of the
12 evidence that has been introduced and that is on the
13 record that you would be willing to receive whatever
14 motions we might offer during the period of time that
15 would be bottomed on the evidence that you've already
16 heard.

17 Court; No, sir, I don't want to get into that
18 now. I've made a ruling. I'm gone stand by it. And I'm
19 not gonna re-open that. The only thing I'm saying is, if,
20 because of a change of conditions the State concludes that
21 Mr. Carpenter has now cooperated to the extent initially
22 invisioned, if they come before me asking me to reconsider
23 that sentence, I will do that. I won't say I'll change
24 it, but I'll entertain a motion. I'm not going back into
25 any testimony. I'm not going back into the record. The

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

10 Court: I don't want to do anything to open up
11 this hearing again and I'm not gone beat a dead horse to
12 death.

13 Mr. Kittrell: If this Defendant agrees to begin
14 to cooperate fully, then, as I understand it, you've left
15 the door open for us to come in before you and make a
16 motion?

17 Court: If you wish to.

18 Mr. Kittrell: Yes, sir.

19 Court: But I'm not going to open up this hearing
20 again. I'm satisfied I'm correct. And the only reason
21 I'm doing this is to give him one opportunity to save
22 himself twenty-five (25) years, if he cares to. And
23 that's all I'm doing. And I'm not sure he's entitled to
24 that, but I will do that, in an abundance of fairness, in
25 trying to be fair to all parties concerned.

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

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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

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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 ---

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.

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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

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ROA 0680

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

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ROA 0681

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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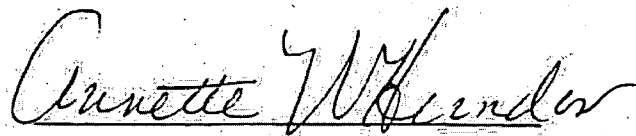
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C E R T I F I C A T E

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

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ROA 0683

State of South Carolina

Court of Common Pleas

County of Richland

Fifth Judicial Circuit

Charles Eugene Carpenter,)

Transcript of Record

Plaintiff,)

vs.)

2016-CP-40-6916

South Carolina Department)
of Corrections,)

Defendant.)

April 6, 2017

Columbia, South Carolina

B E F O R E :

The Honorable Jean Toal, Judge

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

Desa Ballard, Esquire

Harvey M. Watson, III, Esquire

On behalf of the Plaintiff

Damon Christian Wlodarczyk, Esquire

On behalf of the South Carolina

Department of Corrections

James Clayton Mitchel, III, Esquire

On behalf of the State of South Carolina

Stacy S. Johnson

Circuit Court Reporter

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I N D E X

WITNESS

PAGE

Certificate of Reporter

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E X H I B I T SNUMBERDESCRIPTIONID.EVD.

(No exhibits marked.)

ROA 0684

ROA 0685

1 (The following proceedings were held April 6, 2017,
2 beginning at 10:52 AM.)

3 **THE COURT:** All right. These are two matters on
4 Charles Carpenter against the South Carolina Department
5 of Corrections. There's a motion to dismiss and a motion
6 for a writ of habeas corpus. And Ms. Desa Ballard is here
7 for Mr. Carpenter and the South Carolina Department of
8 Corrections is represented by?

9 **MR. WLODARCZYK:** Damon Wlodarczyk, Your Honor.

10 **THE COURT:** Mr. Wlodarczyk. And?

11 **MR. MITCHELL:** Justice Toal, I'm with the AG's office.

12 **THE COURT:** All right, sir.

13 **MR. MITCHELL:** And I've filed a motion to dismiss.
14 That is not technically scheduled for today.

15 **THE COURT:** Well, let's just see how things develop.
16 I'm gonna kind put Ms. Ballard, all right, in the box to
17 begin with, so let's see how things develop and we'll see
18 whether that is something that could be considered at this
19 time or not. But your name is?

20 **MR. MITCHELL:** Clay Mitchell.

21 **THE COURT:** Clay Mitchell just for the benefit of our
22 court reporter.

23 **MS. MITCHELL:** Yes, ma'am.

24 **THE COURT:** Thank you so much, Mr. Mitchell.

25 You-all may be seated. And my apologies for a little

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ROA 0686

1 bit of a delay.

2 (Off the record discussion.)

3 **THE COURT:** All right. Ms. Ballard, I believe the
4 floor is yours; is it not?

5 **MS. BALLARD:** I believe it is, Your Honor. Thank
6 you very much. My partner, Harvey Watson, is with me
7 today, as well as Mr. Carpenter.

8 **THE COURT:** Mr. Watson, Mr. Carpenter.

9 **MS. BALLARD:** Your Honor, our motion is -- we filed
10 an action for declaratory judgment and a petition for a
11 writ of habeas corpus. We asked for the petition for writ
12 of habeas corpus to be expedited. It is our position that
13 Mr. Carpenter is being held illegally at this point because
14 his sentence has expired. There are a number of grounds
15 for that and if you will allow me or indulge me for just a
16 minute, I'd like to go through the complaint briefly
17 because it sets forth kind of the history of the matter.

18 **THE COURT:** Yes, ma'am. You may proceed.

19 **MS. BALLARD:** Thank you, Your Honor.

20 Mr. Carpenter was taken into custody initially
21 pre-trial on November 27, 1989. He entered into a plea
22 agreement with the State in which he agreed to plead
23 guilty with a recommendation of two 25-year concurrent
24 sentences. That plea was taken by Judge Cottingham in
25 April of 1990, April 7, 1990, and a transcript of those

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ROA 0687

1 proceedings is attached to our complaint and our petition.

2 **THE COURT:** And I can't say I've looked at every
3 word, but I've kind of given it some examination to try
4 to understand, but you give me a good complete summary,
5 if you'd like. That's appropriate.

6 **MS. BALLARD:** Thank you. On Page 10 of that
7 transcript, Judge Cottingham accepted the plea agreement.
8 He said he is going to abide by the plea agreement and he
9 stated that on the record. He said it numerous times. He
10 said it again on Page 14. And the plea was entered and
11 accepted on that day, April 7, 2000 -- excuse me, April 7,
12 1990.

13 The Court said that sentencing -- well, at that point
14 -- I'm sorry, they reconvened in June for the sentencing,
15 and at the time of the sentencing the State alleged that
16 Mr. Carpenter, quote, had not been conforming to the terms
17 of the plea agreement. That is the June transcript of
18 1990, which is attached as Exhibit C to our complaint.

19 At that point Judge Cottingham said that he was going
20 to sentence him according -- exactly according to the plea
21 agreement. That is in the transcript. He then said I will
22 later hold a hearing as to whether or not he has complied
23 with his plea agreement. He then sentenced Mr. Carpenter
24 on one of the two charges on that day to a 25-year sentence
25 for one of the two charges under the indictment. He then

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ROA 0688

1 bifurcated the sentencing proceeding and indicated that
2 he was going to reconvene at a later date to determine
3 whether -- and I am quoting him, to determine whether to
4 enhance Mr. Carpenter's sentence on the grounds that
5 Mr. Carpenter had not complied with the plea agreement by
6 fully cooperating with the State.

7 He did reconvene those proceedings. The lawyer at
8 the time, Lyle Lofton, objected to the bifurcation of the
9 proceedings and that objection was noted on the record.

10 **THE COURT:** Well, when you say bifurcation, what I
11 understand you to mean by that is there were two charges,
12 all right? The agreement was for 25 and 25 concurrent?

13 **MS. BALLARD:** Correct.

14 **THE COURT:** He's sentenced on only one of those
15 charges and held in abeyance sentencing on the other
16 charges. Is that --

17 **MS. BALLARD:** He never used those words, Your Honor.

18 **THE COURT:** Well, he did not sentence on the other --
19 don't let me put -- I'm not trying to characterize it in
20 any particular way, but the -- the second charge was not
21 sentenced at that time.

22 **MS. BALLARD:** As you read the transcript, that's
23 correct, but when they reconvened in -- in August, the way
24 Judge Cottingham described it is as if both sentences had
25 been imposed at the June hearing and the -- the question

ROA 0688

ROA 0689

1 before the Court at the August hearing according to him is
2 whether or not he was going to allow the second sentence
3 to stand. Let me find the language.

4 Okay. In Paragraph 30, we are citing paragraph --
5 excuse me, Page 141 of the August transcript, and he --
6 I'm quoting Judge Cottingham, quote, and based on the plea
7 agreement I am going to, one, leave the first part of the
8 sentence on the number two indictment as it was. I further
9 find that an enhancement of the sentence is proper under
10 the circumstances and that in connection with regard -- in
11 regard to the indictment for trafficking marijuana. So
12 while he didn't write on -- he didn't write in the second
13 sentence on the June sentencing date in 1990, when they
14 reconvened in August he treated it as if he already had
15 sentenced him because the question before the Court was
16 is he going to, quote, leave the sentence as it was or is
17 going to, quote, enhance it.

18 And as Your Honor knows from the transcript, and I'm
19 not gonna go through the details of that, he took testimony
20 without advising Mr. Carpenter of his right to have a jury
21 trial on factual issues, without any additional charges
22 having been brought against Mr. Carpenter, and the judge
23 actually said before he ruled that he thought the Supreme
24 Court might disagree with what he was doing because
25 ordinarily during the week of General Sessions court, and

ROA 0689

ROA 0690

1 I'm citing on Page 141 to 142 of the transcript, he said
2 normally you can't, quote, change the sentence later. And
3 he went on to say I don't know what our Supreme Court will
4 say in connection with this, but then he went on to discuss
5 on Page 142 that he was the presiding judge over the grand
6 jury, so he thought that might give him some enhanced
7 jurisdiction or some continuing jurisdiction, but he didn't
8 cite any authority for that and we've not been able to find
9 any..

10 So, Your Honor, while the June transcript only
11 expressly says that he was sentenced on one, in the August
12 transcript Judge Cottingham indicates that he was sentenced
13 on both and the determination at that point as far as Judge
14 Cottingham was concerned was whether to enhance the second
15 sentence, to change the second sentence that apparently was
16 imposed in June to a -- to a consecutive sentence and after
17 taking testimony he found that Mr. -- Mr. Carpenter had not
18 cooperated and he then ordered that the second 25-year
19 sentence be changed to a consecutive 25-year sentence.

20 He also, Your Honor, held a subsequent hearing in 1992
21 because if you'll notice in the August 1990 transcript he
22 said Mr. Carpenter can come back before me at some time in
23 the future and if he shows that he has cooperated, I'm
24 going to give him the benefit of the plea agreement and I
25 will consider whether we're going to change his sentence

ROA 0690

ROA 0691

1 again and there was a hearing in 1992 again in front of
2 Judge Cunningham. I did not include that in the complaint,
3 Your Honor, because I didn't think it was particularly
4 relevant, but at that point two years later Judge
5 Cottingham said I'm not gonna change the sentence. So he
6 -- he continued to attempt to exercise authority over the
7 Carpenter case long after he had accepted the pleas in
8 April of 1990.

9 **THE COURT:** Let me stop you there and ask this
10 question.

11 **MS. BALLARD:** Yes.

12 **THE COURT:** What does the paperwork show in
13 connection with the June initial sentencing versus the
14 August reconvening to enhance?

15 **MS. BALLARD:** I'm not sure, but --

16 **THE COURT:** Do you know what those sheets look like?
17 And I'm just curious as to what these sentencing sheets
18 look like.

19 **MS. BALLARD:** Exhibit D to my complaint, Your Honor --

20 **THE COURT:** Exhibit D as in "dog"?

21 **MS. BALLARD:** "D" as in Desa.

22 **THE COURT:** As in Desa.

23 **MS. BALLARD:** -- Your Honor, is the sentence on --
24 that was imposed in June, and this is -- it just says
25 concurrent to a Federal sentence that he was serving in

ROA 0691

ROA 0692

1 North Carolina.

2 **THE COURT:** Is it the sentencing sheet for Indictment
3 Number -- for one indictment number?

4 **MS. BALLARD:** Yes.

5 **THE COURT:** I've got it, Ms. Ballard.

6 **MS. BALLARD:** Okay.

7 **THE COURT:** Thank you so much.

8 So I'm looking at it here. It says conspiracy to
9 trafficking cocaine, Case Number 90-GS-47-5002, right?

10 **MR. WLODARCZYK:** Your Honor, I do have a copy, if
11 you'd like. It's got both -- both the sentencing sheets
12 on there, if you'd just like to look at them.

13 **THE COURT:** All right. Yes, and that will be helpful.

14 **MR. WLODARCZYK:** If I may approach? It's the front
15 and back, Your Honor.

16 **THE COURT:** All right. Now this, I'm looking,
17 Mr. Wlodarczyk, at the 5002 we'll call it. That's the
18 conspiracy on trafficking.

19 **MS. BALLARD:** That's the one from June.

20 **THE COURT:** It says concurrent with the sentence now
21 serving in Federal court in North Carolina. It says a
22 term of 25 years. That's that charge. Now then on the
23 reverse, this is --

24 **MS. BALLARD:** That's Exhibit F to the complaint, Your
25 Honor. The second one.

ROA 0692

ROA 0693

1 **THE COURT:** -- 5001, and it says consecutive to the
2 sentence of 90-GS-47-5002. This is dated August the 9th,
3 1990, the other one is dated June the 4th, 1990, and my --
4 what I'm curious about is whether on June the 4th of 1990
5 there's any sentencing sheet like this --

6 **MS. BALLARD:** Not that we can find.

7 **THE COURT:** -- for this sentence?

8 **MS. BALLARD:** Not that we can find, Your Honor..

9 **THE COURT:** I got you.

10 **MS. BALLARD:** And -- and, in fact, when -- when I
11 first started looking at this, my initial thought was he
12 had not sentenced him on the second indictment when they
13 convened for the hearing in June. But then in the
14 transcript from the August hearing Judge Cottingham treats
15 it differently, as if he had already accepted it and
16 already sentenced him; but the sentencing sheet -- I can't
17 find a second sentencing sheet from the June hearing. The
18 only one is I can find is from the August hearing.

19 **THE COURT:** I got you. I got you.

20 **MS. BALLARD:** But he talks about it as if the sentence
21 was imposed.

22 **THE COURT:** I understand. You may continue.

23 **MS. BALLARD:** I believe -- the legal effect of that,
24 I believe, Your Honor, is since he accepted the plea in
25 April and he imposed the sentence in June of 1990, it's

ROA 0693

ROA 0694

1 our position that the Court lost authority. And in some
2 cases some say jurisdiction, some cases say authority, but
3 I think the Supreme Court has finally said that it is
4 authority over an individual criminal case. That his
5 authority over this individual criminal case terminated at
6 the adjournment term sine die of the June 1990 term of
7 court so that the Court lacked authority to enhance or
8 change his sentence when the Court reconvened in August of
9 1990. That is the primary basis for our petition for writ.

10 The second basis for our petition for writ is eerily
11 reminiscent of a case that Mr. Watson and I brought before
12 the Supreme Court when Your Honor was still there, which
13 is the Tant case. The Tant case was a situation where
14 Mr. Tant came into the custody of the Department of
15 Corrections and the Department of Corrections entered his
16 sentence as a 15-year sentence. Two and a half years in
17 they got a letter from the judge that said oh, that's not
18 what I meant, I meant for it to be 40 years, and they
19 changed Mr. Tant's sentence at that point.

20 **THE COURT:** Right. And in David Tant's case there
21 wasn't any question as to what sentence had been imposed
22 initially.

23 **MS. BALLARD:** Correct.

24 **THE COURT:** And then the paperwork very clearly
25 indicated an attempt to change that sentence.

ROA 0694

ROA 0695

1 **MS. BALLARD:** Correct.

2 **THE COURT:** And I guess the question is here when
3 you bring up the Tant grounds -- now the first grounds
4 have nothing to do with whether it was sentenced or what
5 sentence or any else. It doesn't matter.

6 **MS. BALLARD:** Right.

7 **THE COURT:** You say the legal effect of what was
8 done in June when he states on the record that he's
9 dealing with both and that he's going to impose the
10 sentence that the -- that he is going to agree completely
11 and impose the sentence that's been arrived at with the
12 guilty plea. Your projection about that is he lost
13 jurisdiction after that.

14 **MS. BALLARD:** He did absolutely. And either he
15 accepted the plea agreement as a whole or he elected not
16 to sentence, although he says he did sentence on the
17 second indictment. Either way it doesn't matter. While
18 there wasn't a sentencing sheet entered until August of
19 1990 -- and I'm back to the first ground again, Your
20 Honor.--

21 **THE COURT:** Yes.

22 **MS. BALLARD:** -- I think that the proceedings in
23 June 1990 have to be construed as if he accepted the plea
24 agreement that day, he sentenced that day on both of them,
25 and the proceedings that occurred in August had no legal

ROA 0695

ROA 0696

1 effect.

2 **THE COURT:** Now let me see that I understand one
3 more time what happened in the sentencing proceeding with
4 respect to talking about the cooperation phase of it.

5 **MS. BALLARD:** All right. The plea was taken in
6 April. In June when the sentencing occurred, the State
7 said we don't believe Mr. Carpenter has been cooperating
8 with the plea agreement and what the judge said is that
9 he would reconvene at a later time to give the State
10 the opportunity to put up testimony so the judge could
11 determine whether or not Mr. Carpenter had or had not
12 cooperated with the State in accordance with his plea
13 agreement, and at that point Mr. Lofton did object. He
14 didn't use the word "bifurcation". That's my word. But
15 he objected to spreading it out into two different
16 hearings, and that, of course, was overruled.

17 Our position is that the Circuit Court's authority
18 over that sentence ended when the court adjourned sine die
19 in the June 1990 term of court.

20 **THE COURT:** And that is enhanced by what -- according
21 to you, by what Judge Cottingham said during the reconvened
22 hearing --

23 **MS. BALLARD:** In August.

24 **THE COURT:** -- when he referred to the matter as an
25 enhancement of the sentence rather than the imposition for

ROA 0696

ROA 0697

1 the first time of the sentence on the second charge?

2 MS. BALLARD: Absolutely.

3 THE COURT: All right.

4 MS. BALLARD: Just like the 1992 hearing, when that
5 reconvened, it was a nonevent as well because he certainly
6 didn't have any jurisdiction at that point to convene.

7 THE COURT: But, again, it illustrates what his
8 thinking was at the time, which is I still have
9 jurisdiction to enhance or to reverse enhancement.

10 MS. BALLARD: He did. He did.

11 THE COURT: All right.

12 MS. BALLARD: Now -- and, Your Honor, I have to be
13 fair to Judge Cottingham. The Court's opinion in the
14 Thrift case had not come out yet and so the construction
15 of plea agreements was a little loosey goosey, if you
16 would, at that point in time, and I think that -- I don't
17 think there was any malice involved as far as Judge
18 Cottingham was concerned. I think he thought he was doing
19 what he had the right to do, but the truth is he lost
20 jurisdiction over this case, he lost authority over this
21 case, when there was a single 25-year sentence imposed.

22 THE COURT: Well, of course, the Thrift case deals
23 with a different aspect of things. It deals with reneging
24 on -- the State's reneging on a plea agreement. In the
25 Thrift case, they agreed about something, a plea was

ROA 0697

ROA 0698

1 taken, a sentence was imposed and then they attempted
2 some re-indictments after public sentiment boiled up --

3 MS. BALLARD: Right.

4 THE COURT: -- and the question before us had to do
5 with whether we have limited immunity or use immunity or
6 whether immunity is a global thing.

7 MS. BALLARD: It was a fascinating case.

8 THE COURT: Right. But the Thrift case dealt not
9 so much with when you lose your decision as it did the
10 authority once you've accepted a plea agreement according
11 to our constitution and impose a sentence to go back and
12 do something different.

13 MS. BALLARD: Exactly.

14 THE COURT: It's kind of a first cousin to what
15 you're arguing.

16 MS. BALLARD: Exactly, Your Honor. And the effect
17 of the Thrift case, interestingly enough, at least in
18 practice was, that at least in State court they rarely use
19 written plea agreements anymore. They've almost stopped
20 completely because they, I think, believe that their hands
21 have been tied somewhat by the Thrift opinion, so.

22 THE COURT: Interestingly enough though in Statewide
23 grand jury cases they continue to use very elaborate
24 written plea agreements.

25 MS. BALLARD: They do.

ROA 0698

ROA 0699

1 **THE COURT:** This wasn't a State grand jury case, was
2 it?

3 **MS. BALLARD:** It was a Statewide grand jury case --

4 **THE COURT:** That's what I thought.

5 **MS. BALLARD:** -- yes, insofar as Judge Cottingham
6 apparently was given authority -- given --

7 **THE COURT:** Global authority.

8 **MS. BALLARD:** -- global authority over, but the
9 Statewide grand jury can't take pleas -- or excuse me.
10 The judge presiding over the Statewide grand jury cannot
11 take pleas, cannot sentence. His authority is absolutely
12 limited to the business of the grand jury. It does not
13 give him continuing authority over the pleas or the
14 sentences that may subsequently result from indictments
15 that are authorized by the Statewide grand jury.

16 **THE COURT:** That's right. Because the Statewide
17 grand jury cases all always -- even though they're
18 statewide when they're indicted, they're always resolved
19 back in the county where the activity took place.

20 **MS. BALLARD:** As this was.

21 **THE COURT:** As this one was.

22 **MS. BALLARD:** Yes.

23 **THE COURT:** All right. And the assignment then is by
24 the normal chief's assignment of a particular judge to a
25 particular term of General Sessions?

ROA 0699

ROA 0700

1 **MS. BALLARD:** Correct.

2 **THE COURT:** Is that how that works?

3 **MS. BALLARD:** Yes. And what, Your Honor, I did --
4 when Mr. Carpenter first retained us, one of the first
5 things I did was go to Court Administration and say show
6 me the orders where Judge Cottingham was assigned to court
7 for these various terms. Unfortunately, those orders
8 don't exist any longer. At least that's what I was told.

9 **THE COURT:** That might well be so.

10 **MS. BALLARD:** It might well be so, but I thought
11 that would answer a lot of our questions and I thought
12 there may even be a particular order executed giving
13 Judge Cottingham continuing authority over this particular
14 case, as opposed to a term of court, but I found nothing
15 and I'm told that those orders don't exist. Taking the
16 common law doctrine that things like that have to be
17 construed in favor of the Defendant, I would take the
18 position, Your Honor, that we have to assume there was
19 no assignment.

20 **THE COURT:** All right. So on your first issue then
21 deals with the -- this authority that we've been talking
22 about?

23 **MS. BALLARD:** Correct.

24 **THE COURT:** So let's move to the second issue and you
25 say that's a Tant issue. Tell me more.

ROA 0700

ROA 0701

1 **MS. BALLARD:** I will. When Mr. Carpenter was
2 initially taken into the custody of the Department of
3 Corrections, they calculated his sentences and beginning
4 at Exhibit I -- I'll show you what it looks like.

5 **THE COURT:** We have it, I think. Sharon's gonna
6 find it.

7 **MS. BALLARD:** I'll hand you my copy, if you'd like.

8 **THE COURT:** Just hang on for a second. She'll -- we
9 have it. Thank you so much.

10 **MS. BALLARD:** Thank you.

11 If you'll notice, the Department of Corrections
12 calculated a 50-year sentence at that time. It's on the
13 right-hand side of the page about halfway down.

14 **THE COURT:** I see it.

15 **MS. BALLARD:** A little further down below that they
16 show his projected max-out date of July 7, 2015.

17 **THE COURT:** Uh-huh. Which would be a 25-year
18 sentence calculated on 1991, right?

19 **MS. BALLARD:** Exactly. And I walked through in the
20 complaint that changed multiple times and I've attached
21 them. If you go from Exhibit I to the following exhibits,
22 J, K, L, J, for instance, shows a max-out date of May --
23 excuse me, April 7, 2017, which is tomorrow.

24 **THE COURT:** Hang on. Hang on. J shows 6-4-90 --
25 excuse me. Max-out date 4-7-2017. That would be tomorrow.

ROA 0701

ROA 0702

1 **MS. BALLARD:** Yes, Your Honor.

2 **THE COURT:** All right.

3 **MS. BALLARD:** And they kept changing it back and
4 forth and back and forth until something fascinating
5 happened. An inmate by the name of Carlos Gonzales wrote
6 to the Supreme Court, Your Honor. These are documents
7 that were produced to me when I requested Mr. Carpenter's
8 file.

9 Mr. Gonzales wrote to the Supreme Court and said I'm
10 being illegally held. My sentence has expired.

11 **THE COURT:** All right. And I'm seeing that third
12 page down in the material. You find -- no, that's
13 Mr. Ozmint. Let me just get to Mr. Gonzales first. All
14 right. Here's Mr. Gonzales. This letter is concerning
15 the charge and my sentence -- all right. 1-6 -- 2-10 I
16 was -- the classification office -- is that the one we're
17 looking at?

18 **MS. BALLARD:** Yes, Your Honor.

19 **THE COURT:** Let me just go through this for a second.

20 **MS. BALLARD:** Thank you, Your Honor.

21 **THE COURT:** Okay. I have now read all of the
22 material. Tell me what you have to say about it.

23 **MS. BALLARD:** Your Honor, what occurred as a result
24 of Mr. Gonzales writing to the Supreme Court and
25 Mr. Gonzales' letter being sent by the Supreme Court to

ROA 0702

ROA 0703

1 the Director of the Department of Corrections was an
2 internal audit was done of all sentences -- all drug
3 sentences of more than 25 years or sentences that were
4 supposed to be 25 years or more. And I have a second
5 packet, which I can hand up to Your Honor, which is the
6 actual individual listings of each case that they
7 reviewed. Again, these were.

8 **THE COURT:** You can summarize it for me. I know
9 you've got it in this material --

10 **MS. BALLARD:** Yes, I do.

11 **THE COURT:** -- so you can summarize for me.

12 **MS. BALLARD:** Well, they -- they went through a
13 total of about 25 different cases and changed some of
14 them, not all of them as far as I can tell. How it
15 affected Mr. Carpenter, Your Honor, is if you'll look at
16 Exhibit P that's attached to our complaint.

17 **THE COURT:** Hang on. "P" as in Paul?

18 **MS. BALLARD:** "P" as in Paul.

19 **THE COURT:** All right.

20 **MS. BALLARD:** If you'll notice, this one is in 2010,
21 which was before the audit triggered by Mr. Gonzales'
22 letter to the Supreme Court.

23 **THE COURT:** All right. That gives max-out of 5-20-16.

24 **MS. BALLARD:** 2016. If you turn the page to
25 Exhibit Q, which is after the Gonzales audit was

ROA 0703

ROA 0704

1 triggered, Mr. Carpenter's max-out date has been changed
2 to 4-7-2040.

3 **THE COURT:** Is that the first time that it
4 reflected --

5 **MS. BALLARD:** Yes. 21 years in. And part of what
6 we argued about with the Tant case was the Department of
7 Corrections was saying we didn't really change the
8 sentence, we just construed it the way the judge meant
9 for it to be to begin with. That argument can't fly here
10 because from day one the Department of Corrections had
11 his sentence listed at 50 years, so there was no
12 construing the sentence one way or the other. They
13 actively went in and changed his sentence along with a
14 number of other people.

15 The records I can hand up to you because, again,
16 they produced them for me in Mr. Carpenter's file. I
17 didn't know about Mr. Gonzales' circumstances until the
18 Department of Corrections produced them. Interestingly,
19 Mr. Watson and I looked up Mr. Gonzales yesterday. He is
20 still in the custody of the Department of Corrections with
21 a max-out date of 2019.

22 **THE COURT:** What is the date of this -- is October 11,
23 2016, the -- no, that's the FOIA request. What was the
24 date on Exhibit P?

25 **MS. BALLARD:** That is the date I believe when they

ROA 0704

ROA 0705

1 gave me the first stack of documents. I wrote and
2 requested Mr. Carpenter's file.

3 **THE COURT:** So October 11, 2016?

4 **MS. BALLARD:** Yes. That's the date they gave me the
5 documents, but you'll see the handwritten note directly
6 above it, and there's someplace else where you can see --

7 **THE COURT:** Filed as of 6-28-10. And that's what the
8 data current is of 6-28-10?

9 **MS. BALLARD:** And I don't know who wrote that, but,
10 yeah, it was printed --

11 **THE COURT:** It is consistent with the stamp in the
12 middle of this --

13 **MS. BALLARD:** Right.

14 **THE COURT:** -- sheet which says data current 6-28-10.

15 **MS. BALLARD:** Correct.

16 **THE COURT:** So that's what they regarded as the
17 situation on June the 28th, 19 -- I mean, 2010. Then as
18 of 6-24-11 --

19 **MS. BALLARD:** Correct.

20 **THE COURT:** -- they regard the max-out date for the
21 first time as 4-7-40.

22 **MS. BALLARD:** Correct. That's a direct result of
23 the audit, the internal audit, that was triggered by
24 Mr. Gonzales' inquiry to the Supreme Court.

25 **THE COURT:** And when you asked for this thing

ROA 0705

ROA 0706

1 October the 11th of 2016, as of -- the only thing that
2 was in his file -- when did this thing change? Data as
3 of --

4 **MS. BALLARD:** There is a way to tell. If you look
5 at the next page --

6 **THE COURT:** 6-24-11. They changed this document to
7 say 4-7-2040 --

8 **MS. BALLARD:** Yes, ma'am.

9 **THE COURT:** -- on 6-24-11, and that was --

10 **MS. BALLARD:** That's Page 2 of Exhibit Q.

11 **THE COURT:** Uh-huh.

12 **MS. BALLARD:** We learned how they do this. This is
13 like a note section and the last two lines of Page 2 of
14 Exhibit Q shows that the -- I'm quoting. Inmate --

15 **THE COURT:** Inmate sentence corrected to show 25
16 years mandatory minimum day for day per statute, S. Willis,
17 6-24-11. So an individual named S. Willis in the course
18 of the audit made that change to the max-out date.

19 **MS. BALLARD:** Correct. And you'll notice the -- the
20 next exhibit after that "R" is where Mr. Carpenter began
21 the internal grievance review system --

22 **THE COURT:** Yes.

23 **MS. BALLARD:** -- where he was attempting to remedy
24 that and that went on for a couple of years. Mr. Ozmint
25 left the Department of Corrections and was retained by

ROA 0706

ROA 0707

1 Mr. Carpenter several years ago in 2015 and that's why
2 this first page of the exhibit, which I e-mailed yesterday
3 and handed up this morning, is directed to Mr. Ozmint.
4 Mr. Ozmint requested information as to why Mr. Carpenter's
5 sentence had been changed.

6 **THE COURT:** And this is Mr. Ozmint, private attorney,
7 at this point?

8 **MS. BALLARD:** Yes. And this was a letter from
9 Shannon Willis, who apparently made the change --
10 Stephanie Willis, excuse me, to Mr. Ozmint, August 7,
11 2015 --

12 **THE COURT:** Yes, I see it.

13 **MS. BALLARD:** -- saying you will remember this audit
14 was triggered by a letter from Mr. Gonzales with your
15 response and it encloses a copy of then Director Ozmint's
16 letter to Mr. Gonzales explaining that his sentence had
17 been, quote, amended. That's the third page. It bears
18 Bates stamp Number 3650 on the bottom right-hand side of
19 the exhibit that I handed up. So Mr. Gonzales has the
20 same situation, but my concern is -- is Mr. Carpenter.

21 So we know from the Tant decision, and the Supreme
22 Court's opinion was very clear in the Tant decision, that
23 an inmate's due process rights are implicated when the
24 Department of Corrections sua sponte goes in and changes
25 a sentence or enhances a sentence, whatever words you want

ROA 0707

ROA 0708

1 to use. Now we did find some Federal cases that indicate
2 that when the Federal Bureau of Prisons goes in and changes
3 a sentence to the benefit of the inmate, there is no
4 requirement that there be a hearing and due process because
5 he benefits from that, but clearly as consistent with
6 Federal statutes or Federal case law and as indicated in
7 the Tant case, they cannot change Mr. Carpenter's sentence,
8 and they did. To the extent they're gonna say they didn't
9 change the sentence, the sentence was always 50 years, the
10 paperwork says his max-out date, not his parole date, not
11 his early release date, his max-out date started in '15,
12 went to '16, went to '17, come back to '16, and I think
13 the last one we saw before they did the internal audit and
14 amended it was May 20, 2016.

15 **THE COURT:** Right. That's the one we've been looking
16 at.

17 **MS. BALLARD:** Right. That's -- that was the sentence.
18 Now that's one ground we have against the Department of
19 Corrections.

20 **THE COURT:** That's your second ground.

21 **MS. BALLARD:** Well, that's the second ground for the
22 petition.

23 **THE COURT:** Right.

24 **MS. BALLARD:** But as to the Department of Corrections
25 I'm arguing the Tant issue.

ROA 0708

ROA 0709

1 **THE COURT:** Right.

2 **MS. BALLARD:** The second issue I wanted to point out,
3 Your Honor, is that there was another inmate, actually
4 several others, who pleaded guilty under this same exact
5 indictment, a Mr. Bobby Jean Horne, who was taken into --
6 into custody at the Department of Corrections about the
7 same time Mr. Carpenter was. He pleaded guilty under the
8 same exact indictment that Mr. Carpenter pleaded guilty
9 to, and I've attached the documents -- let me find those.
10 I can't find the number at the moment, but what happened
11 with Mr. Horne is Mr. Horne was given work credits, he was
12 given good time credits, he was given behavior credits, he
13 was given educational credits, and Mr. Horne, with the
14 exact same sentence that Mr. Carpenter had, was released
15 and discharged from custody with no further retainers on
16 him of any kind in 2001. Now Mr. Carpenter has been told
17 that he's not entitled to any credits because of the
18 statute under which he was sentenced.

19 **THE COURT:** What did the -- the fluctuations before
20 that, what were they attributable to?

21 **MS. BALLARD:** I can't really tell. There's a couple
22 of entries where they seem to give him some good time and
23 some educational time and it's hard to follow.

24 Excuse me.

25 Mr. Carpenter believes it was work credits and there

ROA 0709

ROA 0710

1 were --

2 **THE COURT:** So they did at one point not only
3 construed his max-out well below what they're now saying,
4 but they also gave work credits. Or you think.

5 **MS. BALLARD:** They did. Well, one of the documents
6 that I've attached to the complaint reflects that they
7 did, in fact, give him work credits. Taking us, again,
8 to Federal jurisprudence, Your Honor, and I can --
9 actually we have a State court case that addresses that
10 issue. When it says credits have been earned, the
11 Department of Corrections cannot take them away without
12 violating due process. I can put my hand on the case
13 shortly, Your Honor, but I do have it. It's cited. Maybe
14 it's here.

15 Your Honor, I can't find the particular case.

16 **THE COURT:** That's all right. Continue.

17 **MS. BALLARD:** There's a State court case, as well as
18 a Federal court case, that indicates that once work credits
19 have been earned, they cannot be taken away, which is this
20 vested right.

21 **THE COURT:** Right. So that's the third ground.

22 **MS. BALLARD:** That is the third ground. And we have
23 postured that as an equal protection argument because --

24 **THE COURT:** Because of Horne.

25 **MS. BALLARD:** -- because of Mr. Horne, who was

ROA 0710

ROA 0711

1 released in 2001 after having earned all those credits on
2 the exact same no parole, day for day sentence, all of
3 things they're telling Mr. Carpenter that require him to
4 remain incarcerated until 2040, were given to Mr. Horne.

5 **THE COURT:** All right.

6 **MS. BALLARD:** So the short version of that is that
7 that was the disparate treatment.

8 **THE COURT:** All right.

9 **MS. BALLARD:** Your Honor, we appeared on Department
10 of Corrections motion to dismiss before Judge Manning on
11 February 16, 2017. Judge Manning ordered upon motion of
12 the Department of Corrections that the State, through the
13 Attorney General's Office, be made a party to this action.
14 We, in fact, made the State, through the Attorney General's
15 Office, a party to this action, served them with the
16 complaint, with the petition for writ of habeas corpus and
17 notice of this hearing. Neither the Department of
18 Corrections, nor the Attorney General's Office, have filed
19 answers. Both have filed motions to dismiss. I can
20 address the grounds that are raised for the motions to
21 dismiss, but rather than --

22 **THE COURT:** Well, let's -- you've made your
23 presentation in chief?

24 **MS. BALLARD:** I have.

25 **THE COURT:** All right. And it applies to your habeas

ROA 0711

ROA 0712

1 corpus, of course --

2 MS. BALLARD: Correct.

3 THE COURT: -- as well as your motion.

4 MS. BALLARD: That's correct. Thank you, Your Honor.

5 THE COURT: All right. I think we've got that then
6 and we'll turn now to you, Mr. Wlodarczyk, for the
7 Department of Corrections.

8 MR. WLODARCZYK: Correct, Your Honor.

9 May it please Your Honor? Ms. Ballard is correct.
10 We did file a pre-answer motion to dismiss. While the
11 Court has been presented a lot of factual evidence, the
12 threshold question is the subject matter of this Court to
13 actually entertain these matters as raised, and I would
14 note that our motion to dismiss now is limited solely to
15 subject matter jurisdiction as the remaining issues raised
16 in that motion have either been addressed or are now moot
17 with the State being made a party to this case.

18 Specifically with regard to the Department of
19 Corrections and the issues alleged, I understand it being
20 two issues. One, the computer notation changing of the
21 max-out date and, two, the fact that good time or earned
22 credits were not applied to Mr. Carpenter's sentence.
23 Both of those issues relate to non-collateral claims,
24 which are appropriately addressed through, first, the
25 grievance process and then through the Administrative Law

ROA 0712

ROA 0713

1 Court. That has been cited in every case in our brief in
2 Al-Shabazz and its progeny. In fact, the cases that were
3 cited in response to the motion to dismiss, which were
4 Slezak versus the Department of Corrections, and these are
5 all in Ms. Ballard's brief, Nelson v. Ozmint, Thompson v.
6 State and Delahoussaye v. State, all support our position.
7 She tries to point out that, for example, in, I believe,
8 Delahoussaye v. State that the Court agreed that the
9 sentence-related matter did not have to be brought before
10 the ALJ. Actually in that case what happened was the
11 inmate alleged that he was being held in excess of his
12 sentence and the lower court determined that because it
13 did not involve discretionary credits or good time credits,
14 but rather being held beyond his sentence max-out date,
15 the Court said that he did not have to bring that to the
16 ALJ because it's appropriate under the PCR statute when
17 you're being held beyond your sentence date, and I believe
18 that issue will be raised by the Attorney General's Office
19 with regard to the habeas petition.

20 **THE COURT:** Well, of course, I think you need to
21 remember the context here, all right? We called the
22 Butler case the ultimate safety net that this state has
23 for things that otherwise procedurally cannot be addressed
24 because counsel may not have sued them correctly in direct
25 appeal and postconviction relief; that they remain alleged

ROA 0713

ROA 0714

1 violations of rights shocking the universal sense of
2 justice, and that's the standard for the allowance of a
3 habeas corpus vehicle for addressing issues that meet that
4 very high test.

5 **MR. WLODARCZYK:** Yes, ma'am.

6 **THE COURT:** But one of those things is incarceration
7 past the max-out date and so if that is what Butler says,
8 why wouldn't the Butler case all by itself support
9 jurisdiction of this Court to hear the habeas request?
10 Put the good time credits and so forth to the side for a
11 moment. Those are very traditionally raised in an ALJ
12 and internal discipline-type process or internal
13 grievance-type process. But here you have a max-out date
14 issue, all right, and she says that he's being held beyond
15 his sentence, all right, and I know that's gonna take some
16 exploration and you-all don't agree with that at all, but
17 just in terms of jurisdiction why doesn't Butler give the
18 Circuit Court and the Supreme Court the authority without
19 resort to ALJ to determine those issues? And particularly
20 in light of the fact that they involved constitutional
21 issues, which the ALJ -- neither the ALJ nor the internal
22 process are allowed to address.

23 **MR. WLODARCZYK:** For the Court to accept that
24 Mr. Carpenter is being held past his date --

25 **THE COURT:** No, no, no. We're not -- I'm not

ROA 0714

ROA 0715

1 accepting anything at this point. She is alleging in a
2 habeas petition and we must construe the facts in the
3 light most favorable to the nonmoving party when you look
4 at your motion to dismiss and Butler teaches us that those
5 issues may be raised in habeas. Not that they're gonna
6 be automatically granted.

7 MR. WLODARCZYK: I understand.

8 THE COURT: But isn't this classically something that
9 would be raised in this way?

10 MR. WLODARCZYK: I would disagree. First of all --

11 THE COURT: Why?

12 MR. WLODARCZYK: If it was -- if it was a habeas --
13 if it was appropriate under Butler for a habeas petition,
14 it should be in the original jurisdiction of the Supreme
15 Court.

16 THE COURT: Well, no, Butler was tried. It was -- it
17 followed the normal habeas route. It was tried, all these
18 factual issues, that very much undergirded what Butler
19 contended about the severe incompetence of his counsel
20 and the failure of the system of postconviction relief to
21 help him address that. Butler was addressed in a trial
22 sitting.

23 MR. WLODARCZYK: And, Your Honor, every case that
24 I've found in my memorandum in opposition to the habeas
25 petition says that -- first of all, the issue should be

ROA 0715

ROA 0716

1 raised through the PCR application about --

2 **THE COURT:** It should be and there may be some
3 reasons why she's gonna be ultimately blocked in that
4 regard. Those matters can be explored and consider on
5 its merits of the habeas matter, but those matters are
6 not before me now, are they?

7 **MR. WLODARCZYK:** But I -- but my position is, Your
8 Honor, you can't jump to the habeas level saying there's
9 absolutely no other relief because there is a mechanism of
10 relief at this point in time that has not been exhausted.

11 **THE COURT:** Well, Mr. Wlodarczyk, the South Carolina
12 Supreme Court has said on a number of occasions since
13 Butler was addressed talking about situations in which it
14 is claimed that the world as we know it would come to an
15 end because PCR was not correctly used and we've said on
16 a number of occasions that hey, the ultimate safety net
17 exists and it is habeas in accord with the teachings of
18 the Butler case. Why is that not applicable here?

19 **MR. WLODARCZYK:** First of all, the max-out date has
20 no bearing on the sentence that was awarded to
21 Mr. Carpenter. It is clear, it is unambiguous, of course,
22 the sentencing sheets, that he was given 50 years. Part
23 of our response in opposition we attached to the Federal
24 habeas petition that he filed years ago in which it was
25 a pro se form and he indicates I got 25 years, plus 25.

ROA 0716

ROA 0717

1 years. 50 years. Every single application accordingly
2 that Mr. Carpenter or his attorneys have filed throughout
3 his tenure in the Department of Corrections has said I
4 shouldn't be serving 50 years. This is not an issue that
5 rises to the level of habeas corpus when -- it's not like
6 a sentencing sheet was submitted with 25 years and they
7 couldn't read whether it was consecutive or concurrent
8 and the Department of Corrections upon itself went in and
9 decided well, we believe this is consecutive sentences
10 instead of concurrent. That kind of goes to what the
11 Tant issue is when you have -- and I believe the Court
12 specifically said when you have an unambiguous sentencing
13 sheet the Department of Corrections can't go in and
14 interpret what the judge meant. And in this case the
15 Department of Corrections did not go in and interpret
16 what a judge meant. Your Honor has two sentencing sheets
17 where it's very clear 25 and then 25 more for 50 years.
18 Mr. Carpenter has alleged throughout this issue that he's
19 got 50 years. We're now arguing whether or not the Court
20 has subject matter jurisdiction to address that.

21 **THE COURT:** Uh-huh.

22 **MR. WLODARCZYK:** As to the Department of Corrections'
23 aspect, we maintain that we did not adjust his sentence.
24 We did not change his sentence. We merely made a
25 correction to a computer system that reflected the actual

ROA 0717

ROA 0718

1 sentence that was awarded, so.

2 **THE COURT:** Now let me ask you this. What is our
3 jurisprudence? And I'm asking you. You are far more
4 familiar with this because you deal with it all of the
5 time.

6 **MR. WLODARCZYK:** I wouldn't hold myself out to that,
7 Your Honor.

8 **THE COURT:** All right. What is our jurisprudence
9 on the subject of what happens if the Department of
10 Corrections in an order, as was done here, does adjust
11 its records to reflect a longer max-out date than it
12 initially put in? What does our jurisprudence say about
13 the jurisdiction of the courts to hear that?

14 **MR. WLODARCZYK:** Everything that I understand, Your
15 Honor, is that he would -- if it, in fact, increased his
16 sentence, Mr. Carpenter would be entitled to due process
17 rights, which would include going through the grievance
18 procedure to allow the Department an attempt to correct
19 the issue and then judicial review through the
20 Administrative Law Court and then subject to appellate
21 review through the Court of Appeals and the Supreme Court.
22 So I believe that he would be entitled if, in fact, his
23 sentence was changed to make it longer than he originally
24 had. Again, in the situation I believe we're presented
25 with is he's not been given a longer sentence. He's been

ROA 0718

ROA 0719

1 given --

2 **THE COURT:** Well, that's what I'm asking you about.
3 Do you contend that the sentence is right, the max-out
4 date was wrong and it's been adjusted?

5 **MR. WLODARCZYK:** Yes.

6 **THE COURT:** And I'm wondering whether there's any
7 jurisprudence on that scenario.

8 **MR. WLODARCZYK:** Not that I'm aware of, Your Honor.
9 I don't believe -- personally I don't believe it's a due
10 process violation because the computer system change was
11 reflected to give what he actually got.

12 **THE COURT:** I got you. I understand.

13 **MR. WLODARCZYK:** With regard to the sentence credit
14 issue and good time credits, I believe that he's entitled
15 to due process through that and that mechanism has been
16 clearly established in this court by the Supreme Court
17 that you go through the grievance procedure and then you
18 go through the ALJ and then you go through the Court of
19 Appeals. And I think today the whole -- on the sentencing
20 -- on the credit issue, to say the Court can now bring it
21 before the circuit court is just opening up doors for
22 inmates to start bypassing the ALJ and coming here for
23 this specific issue.

24 Again, whether he got 50 or 25 I really don't think
25 that's a due process issue and, again, I believe the State

ROA 0719

ROA 0720

1 is addressing whether or not the Court has subject matter
2 jurisdiction.

3 **THE COURT:** All right.

4 **MR. WLODARCZYK:** That's our threshold issue, Judge.
5 I believe that in every case that I've been involved with
6 involving credits and good time credits normally this
7 court dismisses that with the right to proceed through
8 the Administrative Law Court with regard to the max-out
9 date. Again, I don't see what due process rights
10 Mr. Carpenter would get assuming that the sentencing was
11 correct, and that's what we have to do through the
12 Department of Corrections, that we made a change internally
13 to reflect what the Court actually awarded. I'm not sure
14 what hearing he would get or what relief he would be
15 entitled to absent challenging the underlying sentences,
16 which I believe he's doing through the State. So that's
17 our position, Your Honor.

18 **THE COURT:** Thank you, Mr. Wlodarczyk. And now we
19 come to the State's position.

20 **MR. MITCHELL:** Justice Toal, may it please the Court?
21 And I'm gonna piggyback off a bit of SCDC's argument. It's
22 our position that this action is procedurally barred here
23 as a State habeas. Any allegation that can be made and
24 that's cognizable under the PCR Act must be raised in PCR.
25 Now I know we've talked about Butler and how it's, you

ROA 0720

ROA 0721

1 know, kind of the last resort for everything and to pick
2 up, you know, any grave injustices, but what we're arguing
3 here is jurisdiction as far as whether the trial court had
4 jurisdiction and whether Mr. Carpenter's held past his
5 max-out date. Both of those are squarely cognizable under
6 the PCR Act and, therefore, they must be raised at such.

7 Now I note that this was a State grand jury case and
8 this was one of the first State grand jury cases in the
9 early nineties and the way those work jurisdiction is
10 assigned to a certain circuit judge. So in this case,
11 Judge Cottingham was assigned this entire case, and he
12 mentions that, that he had presided over the entire case
13 throughout and he knows that Mr. Carpenter, he believes,
14 was at the head of the organization and was the main target
15 after hearing all the evidence. So the way jurisdiction
16 works in those cases is that the trial judge would be --
17 would have jurisdiction over the entire case and would
18 have jurisdiction over sentencing and scheduling matters
19 for those defendants that were indicted by the State grand
20 jury.

21 **THE COURT:** You -- let me stop you there. You agree,
22 I take it, with the observation Ms. Ballard makes; that
23 being the judge administratively in charge of the
24 Statewide grand jury, generally a judge here in Richland,
25 does not automatically make you the trial judge for this

ROA 0721

ROA 0722

1 case, but that your projection is that in Statewide grand
2 jury cases, which are generally multicounty things, that
3 an overall order is generally issued by the chief assigning
4 a judge to the cases that arise from a particular Statewide
5 grand jury activity as the trial judge for all defendants
6 in connection therewith? Is that what you're saying?

7 **MR. MITCHELL:** Yes, ma'am. That's exactly right.

8 **THE COURT:** That's been my experience.

9 **MR. MITCHELL:** So the administrative judge -- the
10 administrative judge would be the Richland judge usually
11 whoever's over the general sessions.

12 **THE COURT:** Right. And that -- that generally --
13 all right. There's a separate order that then is entered
14 assigning a judge after the indictments have come forward
15 as the judge who will preside over a particular trial; is
16 that correct?

17 **MR. MITCHELL:** Correct. And that's what we believe
18 happened here. So Judge Cottingham was assigned to
19 Mr. Carpenter's case and the other nine or ten defendants,
20 I believe it's ten, in a superseding indictment. But --
21 I'll get to my point eventually. So it's -- my point is
22 that this case was venued in Chesterfield, so that the
23 PCR action that should be filed should be filed in
24 Chesterfield, not in Richland County as matter of state
25 agency.

ROA 0722

ROA 0723

1 **THE COURT:** Well, it's either gonna rise or fall on
2 the habeas corpus, all right? The validity of bringing a
3 habeas action and a trailing declaratory judgment action
4 and my experience is that those matters when the defendant
5 is in the hands of the Department of Corrections are most
6 times brought here, all right? Do you think that makes
7 any difference?

8 **MR. MITCHELL:** I'm sorry. Because he's located here
9 in Richland County you mean?

10 **THE COURT:** Yeah, or under -- the jurisdiction of the
11 agency is located here and it's -- also the center of the
12 State is here that Richland gets a generous supply of
13 those type cases because of that distinction.

14 **MR. MITCHELL:** That's correct. And having handled
15 the Fifth Circuit, I'm very well aware of this.

16 **THE COURT:** I'm sure.

17 **MR. MITCHELL:** But here, I think, to get to that
18 we'd have to find that the PCR Act does not cover these
19 allegations.

20 **THE COURT:** That's right, and that's the big question.

21 **MR. MITCHELL:** Right. And that's what I think is
22 before you and I think that's -- you know, I know we
23 talked a ton about the merits of the case and the merits
24 of whether Judge Cottingham had jurisdiction, but I think
25 we need to take a look at whether this Court has.

ROA 0723

ROA 0724

1 jurisdiction first. I think that's, you know --

2 **THE COURT:** Well, I don't feel uncomfortable at all
3 about this Court's jurisdiction. I have a habeas that has
4 been filed here as such matters generally are involving
5 these kind of situations. I have jurisdiction to hear it.
6 Whether I let it go forward, all right, depends on whether
7 or not I grant your motions to dismiss. But I think I
8 have the authority on a validly filed habeas unless you
9 tell me that the habeas cannot be filed here and support
10 that by legal argument, all right? I'm not hesitant
11 about jurisdiction over that. If it were a postconviction
12 relief case, perhaps there are other considerations about
13 venue of the initial conviction, et cetera, but this isn't
14 that kind of case. It's gonna rise or fall not on a
15 postconviction relieve statute, but on whether or not it
16 can be brought in habeas.

17 **MR. MITCHELL:** Well, I think you still have to
18 consider whether these allegations can be brought under
19 PCR because if they can, they must be filed. The PCR Act
20 encompassed everything the State habeas was previously
21 addressing.

22 **THE COURT:** I get that, Counsel, but, you know,
23 really that's just not an argument that needs to be
24 pursued very much. And not to hurt you what I'm telling
25 you now, but she's postured this thing as something that

ROA 0724

ROA 0725

1 cannot be addressed in PCR but must be addressed in the
2 habeas. That's what I've got to decide to begin with, so
3 there's no problem with the authority of the Circuit Court
4 here to do that. If I decide that it's not subject to
5 habeas activity, that's the end of it except for what
6 appeal would be taken, but it's not -- it's not gonna be
7 resolved by saying it should have been brought as a PCR.
8 She's alleged a series of circumstances that would entitle
9 her to bring it as a habeas action. That's what I've got
10 to deal with.

11 **MR. MITCHELL:** And I think the step one of that is
12 that she's got to show and justify why it's filed as a
13 habeas and why it shouldn't be --

14 **THE COURT:** That's right. And you say -- you say it
15 should have been filed as a PCR. Well, your argument
16 doesn't deprive me of jurisdiction. It's just an argument
17 in favor of your saying that this matter needs to be
18 dismissed, it's not properly brought period.

19 **MR. MITCHELL:** Correct. And I think the
20 jurisdiction --

21 **THE COURT:** We deal with a lot of things in Circuit
22 Court that we dismiss. I do it every day, but that
23 doesn't prohibit my authority to hear the case. It would
24 inhibit the ability of the Plaintiff to go forward.

25 **MR. MITCHELL:** Exactly. The ability of the Plaintiff

ROA 0725

ROA 0726

1 to go forward to reach the merits of the underlying
2 allegations.

3 **THE COURT:** That's right. That's right. I think
4 we're on the same page.

5 **MR. MITCHELL:** We are. And, Your Honor, it's just
6 our position that if this were to go forward and if our
7 motion to dismiss were denied that we could set a hearing
8 in the future to have these allegations heard on the
9 merits.

10 **THE COURT:** Oh, no question about that. If for any
11 reason I decide not to dismiss this case, both on
12 Mr. Wlodarczyk's argument on the part of the Department
13 and on your argument on the part of the State, then that
14 doesn't do anything but put it towards a merits hearing.
15 But there are many, many factual allegations that have
16 been made here that may or may not be true and may not be
17 appropriate and may not be supported. I agree with you
18 completely about that.

19 **MR. MITCHELL:** Yes, ma'am. And --

20 **THE COURT:** But I evaluate those matters here only
21 as responses to your motion to dismiss, things being
22 viewed in the light most favorable to the nonmoving party
23 and the nonmoving party having put those things forward
24 in support of a habeas, which recites a bunch of factual
25 material. That's -- she gets the benefit at this moment

ROA 0726

ROA 0727

1 to a favorable construction on those matters, but that --
2 that only lasts so far as we determine whether this matter
3 ought to be dismissed.

4 **MR. MITCHELL:** Yes, ma'am. And as far as Butler
5 goes, I think -- you know, I'm kind of fond of Butler
6 because Justice Pleicones agreed in dissent with me
7 recently citing Butler saying that was the proper avenue
8 for relief, but here I think shocking to the conscience
9 of the universe, particularly when we look at it like
10 that, you know, his sentence is pretty clear, it's 50
11 years from the transcripts and from the record, and that's
12 not shocking to the conscience of the universe that he
13 has now reached a max-out date. I mean, that's kind of
14 what's been alleged, but the sentence is the sentence. I
15 understand it's a long sentence, a stiff sentence, on a
16 drug case, especially from a plea case, but I think there
17 are reasons for that and there's reasons Judge Cottingham
18 gave him a consecutive amount of time due to -- and that's
19 what these hearings were held for, to determine whether he
20 had violated or whether he was entitled to enforcement of
21 the plea agreement.

22 Now the plea agreement stated that if he were to
23 cooperate, the State would recommend or maybe negotiate a
24 25-year sentence, but if he were not to cooperate, which
25 Judge Cottingham found him in violation of the plea

ROA 0727

ROA 0728

1 agreement, that he would be sentenced to 50 years, a
2 consecutive 25-year term. There was testimony from
3 Mr. Carpenter. He understood that. He understood by
4 not cooperating and turning over certain assets and not
5 giving information to SLED investigators that he would be
6 sentenced to the 50 years. He says that specifically.
7 He's says I'll take the 50, I'm not gonna cooperate,
8 something along those lines.

9 So I don't think there's any question that the
10 understanding then was that he was sentenced to
11 fifty years. And I don't want to get into the merits
12 too much, but that's our position on that..

13 **THE COURT:** Let me ask you this. What do you make of
14 this disconnect or difference? I'm trying not to use
15 anything that characterizes it one way or another, but
16 there is a difference between what is said on the record
17 by Judge Cottingham and what the sentencing sheets reflect.
18 On the record there is a sentence for 25 years that is
19 dated on the date of the initial hearing for sentencing
20 and then -- that was in June.

21 **MR. MITCHELL:** Right.

22 **THE COURT:** And then there is another sentencing
23 sheet that has a consecutive sentence and it's the only
24 sentencing sheet on that subject and it's dated in August,
25 but in the transcript of the record Judge Cottingham

ROA 0728

ROA 0729

1 discusses going with the plea agreement and then enhancing.
2 What do you make of that difference in what he says and
3 what the sentencing sheet says?

4 **MR. MITCHELL:** When he says enhanced, I think he's
5 looking at it from the plea agreement because in the plea
6 agreement it says 25 or 50. You know, if you do this, you
7 will be sentenced to 25, that's the agreement, then if you
8 don't do this, you'll be sentenced to 50. So I think
9 enhanced -- I don't think it means that he had already
10 imposed a sentence on that date and then was amending the
11 sentence for some kind of rule to show cause violation of
12 the plea agreement. I don't think that's what that was.
13 I think he just deferred sentencing on the second
14 indictment to give Mr. Carpenter the opportunity and,
15 you know, what Judge Cottingham did, he gave him every
16 opportunity in the world it seemed. I mean, I also note
17 that I think Mr. Lofton, who represented him during the
18 plea, he had filed a notice of appeal just to make sure
19 that if Judge Cottingham did not have jurisdiction any
20 longer that he would be filing a timely direct appeal on
21 that and one of the -- so he had two appeals. The first
22 appeal was dismissed and I think that's because Judge
23 Cottingham still had jurisdiction over the case and then
24 he filed a second direct appeal after -- or a second notice
25 of appeal after he was sentenced in that August hearing,

ROA 0729

ROA 0730

1 so -- or after he's denied the motion to reconsider after
2 the second sentencing.

3 **THE COURT:** Sure. I understand. So you say all of
4 the paper records including the ultimate re-appeal of the
5 enhanced sentence, which is the only paper sentence that
6 there is --

7 **MR. MITCHELL:** Right.

8 **THE COURT:** -- further supports your position that
9 the real sentence was one time on one and the other time
10 on the other?

11 **MR. MITCHELL:** It was just a deferment from
12 sentencing and I think trial judges have the ability to
13 do that and retain jurisdiction on cases. We do that
14 all the time, so I do hope it's in line.

15 **THE COURT:** Well, there's no question if they haven't
16 sentenced yet, it can be adjourned and jurisdiction can be
17 retained.

18 **MR. MITCHELL:** And I think what kind of blew this --
19 what's causing the confusion is that he was already in
20 violation on the plea agreement before he was sentenced
21 on the second one. So they had a hearing and they even
22 cite a Fourth Circuit case setting out the procedure of
23 how a violation of a plea agreement works. So the State
24 comes and -- he pled, they said we'll defer sentencing
25 until a further date; if you cooperate, you'll get your

ROA 0730

ROA 0731

1 consecutive term, and then the State says Your Honor,
2 he's violated this thing left and right, he's refused to
3 do what was required of him in the plea agreement, so,
4 therefore, we're now seeking enforcement of the plea
5 agreement, the 50 years, deferment on the sentencing.

6 **THE COURT:** I think I understand your argument.

7 **MR. MITCHELL:** Yes, ma'am. Thank you.

8 **THE COURT:** Very good.

9 All right. Ms. Ballard, any reply?

10 **MS. BALLARD:** Thank you, Your Honor.

11 First, with reference to the point I was making
12 earlier about the deprivation of the good time credits
13 after they have been granted and taken away, that case
14 is Furtick versus the South Carolina Department of
15 Corrections.

16 **THE COURT:** F-U-R --

17 **MS. BALLARD:** F-U-R-T-I-C-K.

18 **THE COURT:** Furtick. I'm very well aware of Furtick.

19 **MS. BALLARD:** And it does also talk about the fact
20 that if an inmate is challenging calculation of a
21 sentence, credits, custody status or other conditions of
22 imprisonment, he could bring an action under the APA or
23 he could bring a declaratory judgment action. But, Your
24 Honor, Mr. Carpenter in 1993 pro se filed a petition for
25 writ of habeas corpus with the South Carolina Supreme

ROA 0731

ROA 0732

1 Court and I've been trying to put my hands on that actual
2 order.

3 **THE COURT:** That's all right. I will accept that
4 that was done.

5 **MS. BALLARD:** What the Court's order said was
6 Mr. Carpenter is not now alleging an immediate right to
7 be released and, therefore, it is not appropriate for
8 consideration on habeas corpus. Today he is. All the
9 history of proceedings, the PCR, everything that the
10 State has pointed out, I've studied them as closely as I
11 can and I find nothing that has raised this issue. I
12 find nothing that has raised the issue of the inability
13 of Judge Cottingham to enhance the sentence.

14 **THE COURT:** Well, I'll tell you this, all right?
15 It's just gonna depend on how you regard it. There are
16 plenty of cases that talk about what you do when you have
17 a sentencing sheet that says one thing and you have
18 comments by the judge that say another thing and what we
19 have to do is go by the sentencing sheet. That's pretty
20 solid case law.

21 **MS. BALLARD:** I don't disagree with that at all.

22 **THE COURT:** All right. Now their argument is that
23 that's what we've got here, is we've got a judge saying a
24 lot of different things, but, of course, typical of a way
25 to enforce an agreement at a later time is to sentence on

ROA 0732

ROA 0733

1 only one charge, hold the other one over their head and
2 have another hearing at a later time and decide whether
3 that other sentence is gonna be consecutive or concurrent.
4 That's been -- that's a very typical way of handling that.

5 MS. BALLARD: And the Court has described that
6 process in detail, but that's not what happened here.

7 THE COURT: Exactly. I understand you say it didn't
8 happen that way.

9 MS. BALLARD: Correct.

10 THE COURT: Well, I think I understand the arguments
11 that are made. Here's what I'm gonna do.

12 MS. BALLARD: Thank you, Your Honor.

13 THE COURT: All right. I think you have got a big
14 mountain to climb on the merits of this thing, Ms. Ballard,
15 but at this point I think this Court has jurisdiction to
16 consider this habeas corpus matter, all right, and if this
17 habeas corpus matter is a valid one it will be so only
18 because of Butler versus the State. It contends that he
19 is serving past his max-out date and if that were so that
20 would be -- meet the test of a violation, which in the
21 setting constitutes something that is shocking to the
22 universal sense of justice. Serving past what your
23 sentence is would meet that qualification.

24 I don't know on a merits hearing what would occur,
25 but I will deny the Department of Corrections' and the

ROA 0733

ROA 0734

1 State's motion to dismiss on the basis of, A, the fact
2 that the Court does have jurisdiction. Both have raised
3 that. I would rule that the Court does have jurisdiction
4 to hear the validity of bringing this habeas corpus matter,
5 as I do believe the Court has jurisdiction under Furtick
6 to hear the declaratory judgment.

7 Now all that means is the motions to dismiss are
8 denied. I could say a whole bunch or I can simply file
9 a Form 4 that denies them. I believe -- and cite Butler
10 and cite Furtick and I believe if I do what I've just
11 described, it will give both sides the maximum flexibility
12 because I think this raises some serious questions.

13 You've got a mountain to climb, but so far you've
14 raised enough to survive a motion to dismiss. Even if
15 the motion to dismiss had addressed the validity of being
16 able to raise these matters in this forum as opposed to
17 postconviction relief, and if you feel that more needs
18 to be said by way of that issue, I'll entertain the
19 submission of a proposed order that would deal with that.

20 So what I'm gonna do is tell you I'm gonna hold my
21 Form 4. Everybody has got this on their mind, and you
22 in particular, Ms. Ballard. I wonder if you could
23 quickly get me something, sharing it, of course, with
24 Mr. Wlodarczyk and with counsel for the Attorney General's
25 Office --

ROA 0734

ROA 0735

1 **MS. BALLARD:** I will, Your Honor.

2 **THE COURT:** -- and then I'll decide whether to just
3 put it on a Form 4 as I initially suggested or look at
4 her writing and file something that is a little bit more
5 detailed on the jurisdictional issue, not on the merits
6 of what it brings.

7 And so let's leave it like that and while it's fresh
8 on your mind get it to me -- or as quickly as you can and
9 I'll try to get it out as quickly as I can.

10 **MS. BALLARD:** I'll do that, Your Honor.

11 **MR. WLODARCZYK:** And, Your Honor, I believe once
12 you sign the order we'll have fourteen days to file our
13 answer. Is that --

14 **THE COURT:** Absolutely. Absolutely.

15 **MR. WLODARCZYK:** Thank you, Your Honor.

16 **THE COURT:** And I'm sure that Ms. Ballard will
17 entertain reasonable requests for additional time if you
18 need it. It's a complicated matter.

19 **MR. WLODARCZYK:** Thank you very much, Your Honor.

20 **THE COURT:** Very good.

21 **MS. BALLARD:** Thank you, Your Honor.

22 (Whereupon, the proceedings were concluded at
23 12:00 PM.)

24

25

ROA 0735

ROA 0736

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 6th day of April, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 10, 2018

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

ROA 0736

State of South Carolina
County of Richland

Court of Common Pleas

Charles Eugene Carpenter)

Plaintiff,)

v.)

State of South Carolina)

and The South Carolina)

Department of Corrections)

Defendants.)

Transcript of Record
2016-CP-40-06916

June 6, 2017

Columbia, South Carolina

B E F O R E:

The Honorable Robert Hood, Judge.

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

Desa Ballard, Esquire

Harvey M. Watson III, Esquire

Attorneys for the Plaintiff

Damon Wlodarczyk, Esquire

J. Clayton Mitchell, Esquire

Attorneys for the Defendants

Bethanie K. Creppon
Circuit Court Reporter

	I N D E X	
1		<u>WITNESS</u>
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
<u>PLAINTIFF'S</u>			
EXH. NOS. A - F	Binder	12	12
<u>DEFENDANT'S</u>			
EXH. NO. 1	Grievance History	67	67

P R O C E E D I N G S

* * *

THE COURT: All right. We're on the record,
2016-CP-40-6916, Charles Carpenter vs. The
Department of Corrections and The State of South
Carolina.

Are you Mr. Carpenter?

MR. CARPENTER: Yes, sir.

THE COURT: All right. Mr. Carpenter is
present and represented by Ms. Ballard.

And what's your name, sir?

MR. WATSON: Harvey Watson.

THE COURT: All right. And who is here on
behalf of the Department of Corrections?

MR. WLODARCZYK: Damon Wlodarczyk, Your Honor.

THE COURT: And, Mr. Mitchell, are you here on
behalf of the State of South Carolina?

MR. MITCHELL: Yes, sir.

THE COURT: Okay. Good morning. What do we
need to take up?

MS. BALLARD: Your Honor, may Mr. Carpenter
have his handcuffs taken off so he can take notes?

THE COURT: Where is he in custody?

MS. BALLARD: Evans. I understand each judge
is different and I thought I would ask. Is that

1 okay? If it's okay with you, Your Honor.

2 THE COURT: If you get out of line, we're going
3 to put them back on. Okay?

4 MR. CARPENTER: Yes, sir.

5 MS. BALLARD: Thank you very much.

6 MR. WLODARCZYK: Your Honor, I think the first
7 matter to take up would be the motion to set aside
8 the request for entry of default on the Department
9 of Corrections. The motion to bifurcate is moot
10 since we're trying this case now.

11 THE COURT: Okay.

12 MR. WLODARCZYK: And then there's a motion for
13 summary judgment, depending on the Court's ruling.

14 THE COURT: Okay.

15 MS. BALLARD: Your Honor, with reference to the
16 affidavits of default that we filed against the
17 defendants, I think we've explained in the
18 memorandum how all of that occurred. We understand
19 under Rule 55 that default against the State does
20 nothing more than admit the factual allegations of
21 the complaint and we're still obligated to prove
22 your case.

23 We believe that the case is -- the facts are
24 not disputed anyway, so the motion for entry for
25 default doesn't have a lot of significance in terms

1 of where we're going to end up. But I felt like, on
2 Mr. Carpenter's behalf, I had to file every
3 procedural route that he had available to him to
4 expedite his case, and that's the reason I filed the
5 affidavits of default counsel have -- the three
6 counsel have discussed this morning. And I think we
7 agree that the facts are not in dispute, but I would
8 like them to confirm that before we proceed because,
9 obviously, that will change the way we proceed.

10 THE COURT: All right.

11 Mr. Wlodarczyk?

12 MR. WLODARCZYK: Yes, Your Honor. I think that
13 the issue with regard to the Department of
14 Corrections which was set forth in Plaintiff's
15 memorandum that was e-mailed yesterday are two
16 points; one, whether he was denied due process with
17 regard to the change in his max-out date. We
18 concede that it was changed several times and our
19 positions reflect his true and correct sentence.

20 The second issue is whether he was denied due
21 process or equal protection when he was -- when his
22 earned work credits and good-time credits were taken
23 back at some later point in time based on the
24 mandatory minimum sentence that he had.

25 Factually speaking, we would deny the

1 allegations that there was disparate treatment
2 between him and other prisoners, as we've explained,
3 so I don't know how, factually, that plays in for
4 default purposes. But we do -- we would agree that
5 his max-out date was changed and his work-related
6 credits were taken back based on the -- what is
7 actually -- what Ms. Ballard has put forth in terms
8 of the reasonings set forth therein.

9 So it's our position that we were never in
10 default. We have appeared and defended this matter
11 since its inception. While it may be an argument
12 that the answer may be untimely, based on what was
13 put in Judge Toal's order, the order provided that
14 the defendants were supposed to respond within 15
15 days. That was per my request. I actually
16 requested 14 days because I've already -- the
17 majority of my stuff, a lot of my stuff, is in
18 federal practice, which is 14 days.

19 Judge Toal indicated I'd be given all the
20 protections under the civil rules of procedure;
21 however, when the order was prepared, initially it
22 said 15 days, and then the very last sentence said
23 15 days from the date of the hearing, which was not
24 said at the actual hearing.

25 The problem with that is the order actually

1 making that final did not come out until five or six
2 days after the 15 days from the hearing had passed.
3 So it was our position, of course, when the order
4 was filed, we calendared 15 days from that date for
5 our response, which was timely filed according to
6 that timeline.

7 And so it's our position that, at the worst, it
8 was just a misunderstanding, there's no prejudice to
9 either parties, we have meritorious defenses as
10 we've set forth, and that it should have been a
11 motion to strike, answering it timely, rather than
12 an entry of default. And my understanding is
13 Richland County does not enter defaults just by
14 sending a notice of the request for entry of
15 default, it actually has to be determined by the
16 Court, Your Honor.

17 So since we're here for a trial and it appears
18 it may be all legal, I think we may not need
19 witnesses and we may finish this today. We'd just
20 ask that our answer be accepted as timely and we
21 proceed.

22 THE COURT: Ms. Ballard?

23 MS. BALLARD: Based on what I think is an
24 agreement that we don't have facts in dispute other
25 than the question of disparate treatment, whether

1 that's a factual issue or a legal issue, I would not
2 object to the Court considering the answer that's
3 been filed by SCDC.

4 THE COURT: All right. That's fine.

5 MR. MITCHELL: Judge, she also filed a --
6 Mr. Carpenter also filed a motion to -- for default
7 against the State in that we did not file a formal
8 answer. We filed a -- we got brought into this
9 February 17th, earlier this year, after a hearing
10 before Judge Manning. He ordered that we be made a
11 party, as this is a state habeas. I filed a return
12 and motions to dismiss that were in response to the
13 state habeas portion of it.

14 I never believed that the declaratory judgment
15 portion of the action really concerned us, so after
16 the motion to dismiss was denied, I filed an amended
17 return to the petition for writ of habeas corpus.
18 So, again, that's, you know, our response to the
19 petition. I don't believe the DJ action concerns
20 the State of South Carolina insofar as his release
21 from custody.

22 So, you know, we have filed responses. I think
23 the argument was that we've not filed a formal
24 answer, but we consider that an answer and a proper
25 responsive pleading to the petition for writ of

1 habeas corpus. And, you know, we're here for this
2 today. And we've also -- and just that, you know,
3 it's difficult to hold the State to default and that
4 it shows some sort prejudice. And we're here today
5 and I think we're ready to go forward on that. So
6 we'd just ask that the motion for default against
7 the State be denied.

8 THE COURT: And where are you on the factual
9 dispute?

10 MR. MITCHELL: On the factual dispute -- I
11 think we have a few factual disputes. I think -- as
12 far as the complaint sets out, I think the issue is
13 really one of sentencing; whether the sentence was
14 imposed on a certain date and whether that sentence
15 was concurrent or consecutive. That's really what
16 the main issue is going to be. So I think, you
17 know, that's in dispute.

18 But insofar as pretty much everything else, I
19 think we are in agreement. I mean, it's -- you
20 know, as far as not conceding the case which weren't
21 set forth in the complaint, there's obviously some
22 factual disputes. But I think we're here, you can
23 make a ruling without witnesses, and what's in the
24 record and been submitted and filed with the clerk,
25 I think all of that would be appropriate.

1 MS. BALLARD: Part of the reason, Your Honor,
2 that I attached all of the documents that I attached
3 to the complaint and incorporated therein by
4 reference was to try to get us to a hearing where we
5 could deal with the issues just based on the
6 documents themselves without witnesses.

7 But I do have a witness on standby for tomorrow
8 to authenticate some of the plaintiff's exhibits.
9 And I believe, based on our discussions before Your
10 Honor took the bench, that there are no objections
11 to any of my trial exhibits, but I wanted to make
12 sure of that before I handed them up.

13 MR. MITCHELL: I don't have any objections to
14 what's in those exhibits there.

15 THE COURT: Mr. Wlodarczyk?

16 MR. WLODARCZYK: To the extent I have reviewed
17 it, and I believe they're all SCDC documents, I have
18 no objection to them.

19 MS. BALLARD: They are.

20 THE COURT: Okay.

21 MS. BALLARD: And, Your Honor, they are
22 Exhibits A through F. And I've provided a bound
23 copy to the court reporter.

24 THE COURT: Okay. Let's let Bethanie mark
25 them.

1 MS. BALLARD: Okay.

2 (Plaintiff's Exhibits A - F marked for
3 identification and admitted into evidence.)

4 MS. BALLARD: Thank you, Your Honor. By way of
5 background, we filed this complaint for declaratory
6 judgment and petition for writ of habeas corpus on
7 behalf of Mr. Carpenter in November of 2016. The
8 matter came before Judge Manning on the motion to
9 dismiss filed by SCDC.

10 Judge Manning heard that matter on February
11 23rd. And at that time he ordered that the State of
12 South Carolina, through the Attorney General's
13 Office, be made a party to the action. So we then
14 served the Attorney General's Office with the
15 summons and complaint and with the petition for writ
16 of habeas corpus.

17 Both defendants filed a motion to dismiss
18 arguing various grounds. Justice Toal heard those
19 motions to dismiss and issued an order dated April
20 25th, 2017, denying those motions to dismiss. And
21 so we're here on the merits for the petition for
22 declaratory judgment and the petition for habeas
23 corpus.

24 If Your Honor would indulge me, I'd like to
25 walk through the complaint and the exhibits that are

1 attached to the complaint because, as I said, I
2 think the exhibits pretty much establish our case.
3 And I don't mean to belabor the issues, but I think
4 the documents that are attached to the complaint
5 tell a story.

6 Your Honor, Mr. Carpenter was arrested
7 originally in November 1989 and he entered into a
8 plea agreement that is attached to the complaint as
9 Exhibit A.

10 THE COURT: Okay.

11 MS. BALLARD: The plea agreement --

12 THE COURT: Was he in a state grand jury case?

13 MS. BALLARD: Apparently.

14 THE COURT: Was the -- is the county number 47?

15 MS. BALLARD: It is.

16 THE COURT: Okay. Then he was in a state grand
17 jury case. All right.

18 MS. BALLARD: And the plea agreement, Your
19 Honor, addressed two different indictments; it
20 addressed Indictment 97-GS-47-5001, 97-GS-47- --

21 THE COURT: It's 1990 --

22 MS. BALLARD: I'm sorry.

23 THE COURT: -- not 1997.

24 MS. BALLARD: 1990.

25 THE COURT: Right.

1 MS. BALLARD: I'm sorry.

2 THE COURT: That's okay.

3 MS. BALLARD: 1990-GS-47-5001 and
4 1990-GS-47-5002.

5 THE COURT: Okay.

6 MS. BALLARD: The terms of the plea agreement,
7 Your Honor, were that Mr. Carpenter would enter
8 pleas of guilty on both indictments. Those were
9 possession with intent; one was marijuana and one
10 was cocaine. And Mr. Carpenter entered into that
11 plea agreement, the State indicated in the plea
12 agreement that they would recommend a sentence
13 that -- a 25-year total sentence, that being the
14 sentences would run concurrently.

15 There was also a provision in the plea
16 agreement that Mr. Carpenter would cooperate with
17 law enforcement. The plea was taken, Your Honor, on
18 April 7th, 1990. And we have taken -- we've
19 attached the entire transcript of the plea
20 proceeding as Exhibit B to the complaint.

21 Some of the statements that were made by Judge
22 Cottingham at the time are significant, Your Honor,
23 and I wanted to mention them, if I could. These are
24 the ones that are set forth in my memorandum, Your
25 Honor.

1 THE COURT: Okay. Where is the actual
2 transcript?

3 MS. BALLARD: The transcript is Exhibit B to
4 the complaint.

5 THE COURT: B as in bravo?

6 MS. BALLARD: B as in bravo, yes.

7 THE COURT: Okay.

8 MS. BALLARD: Judge Cottingham indicated that
9 he was going to accept the plea agreement and he
10 made several statements that Mr. Carpenter was
11 entitled to the benefit of a plea agreement and the
12 Court was going to comply with the plea agreement.

13 He accepted the plea agreement on that date,
14 but he did not enter any sentences on that date.
15 And it doesn't really -- it's unclear, at the end of
16 the transcript of the April 1990 proceedings, other
17 than saying: I'm accepting the plea agreement, I'm
18 going to abide by the plea agreement. That's page
19 20 of Exhibit B. The State says: It's a sentence
20 that does not have any eligibility for parole until
21 the passage of 25 years. All of that was accepted
22 and agreed on the record, the plea was accepted.

23 Judge Cottingham reconvened for sentencing on
24 June 4th, 1990, and the counsel that was then
25 representing him was Lionel Loftin and Jim Roberts.

1 The State made its presentation and asserted that
2 Mr. Carpenter had not cooperated with law
3 enforcement as required by the plea agreement. So
4 Judge Cottingham, we believe, based on the
5 documents, he entered a sentence only on
6 90-GS-47-5002. And that's Exhibit D to our
7 complaint. And Your Honor will notice that that is
8 a 25-year sentence and a fine of, I believe,
9 \$200,000, concurrent with a sentence that was then
10 running in North Carolina.

11 As the State argued that Mr. Carpenter had not
12 complied with the obligations to cooperate with the
13 State, Judge Cottingham indicated that he was going
14 to delay sentencing on the second indictment.
15 That's on page 24 of Exhibit C. He said: I would
16 conclude that the sentencing proceeding is not
17 concluded. And he was going to retain jurisdiction
18 to enter a sentence at a later time; that would be
19 the sentence on the 5001 indictment.

20 Mr. Carpenter's counsel objected to that and
21 took the position that both sentences had to be
22 entered at the same time and that the Court did not
23 have authority to bifurcate the sentencing proceed
24 ing. The judge indicated, I believe in this
25 hearing -- it may be the next hearing. But he did

1 indicate that he was not only the trial judge he was
2 assigned, he was also the judge assigned to the
3 grand jury.

4 And he opined on the jurisdictional issue and
5 he said: I know I don't have jurisdiction beyond
6 the adjournment of the term sine die, but we'll see
7 what the Supreme Court says about the fact that I'm
8 the presiding judge over the grand jury. And so he
9 attempted to retain jurisdiction to bifurcate the
10 sentencing under the theory that he was the
11 presiding judge of the grand jury, not the presiding
12 judge in the particular case.

13 So when they reconvene on August 9th -- the
14 transcript of the reconvened proceeding is Exhibit
15 E. And the State was then represented by Sean
16 Kittrell, introduced the proceedings as the second
17 half of a bifurcated hearing. Mr. Carpenter's
18 counsel again objected to the sentencing being
19 bifurcated.

20 And the judge went through a colloquy
21 explaining why we were there -- why the parties were
22 there. And he said that he had bifurcated the
23 proceeding because of the allegations made by the
24 State that Mr. Carpenter had not complied with the
25 plea agreement. And he also said that he was

1 holding the second sentencing hearing for the
2 purpose of determining whether to enhance the
3 sentence on the second indictment, and he also said
4 that he was making a determination as to whether
5 Mr. Carpenter should be held in contempt of the plea
6 agreement.

7 He made several statements during the
8 proceedings in August which indicated that he had,
9 in fact, sentenced Mr. Carpenter on the first -- on
10 both indictments when they convened in August --
11 excuse me, in June. So he then took testimony from
12 a number of witnesses that were proffered by the
13 State.

14 These were new charges, they were not subject
15 to an indictment; these were witnesses from the task
16 force that were put up that essentially said
17 Mr. Carpenter hasn't told us everything he knows,
18 they put up a few witnesses who said we're scared of
19 Mr. Carpenter, we fear for our life; all of these
20 things not subject to any indictment, but it was the
21 evidence that the State used to try to establish
22 that Mr. Carpenter had not complied with the plea
23 agreement.

24 On the basis of the testimony that was provided
25 by the State on the August 9th, 1990 hearing, Judge

1 Cottingham determined that he was going to enhance
2 the sentence. And he entered a sentence on
3 Indictment No. 5001 as 25 years, which was, in fact,
4 set forth in the plea agreement. But by virtue of
5 the enhancement, he made it consecutive to the
6 original sentence on 5001, the result of which, when
7 Mr. Carpenter left the courtroom on August 9th,
8 1990, he had been sentenced to 50 years.

9 Our position is that Judge Cottingham did not
10 have subject matter jurisdiction to bifurcate the
11 sentencing proceeding as indicated by Mr. Loftin and
12 as indicated by Mr. Rogers at that sentencing
13 proceeding.

14 And we've cited numerous cases that are in our
15 brief that talk about the adjournment of a term of
16 court sine die causes a judge to lose jurisdiction
17 over a particular case with two exceptions; one, a
18 timely posttrial motion and, two, a motion to set
19 aside filed by the defendant, like a 59(e) motion in
20 a civil case. Those are the only two exceptions to
21 the subject matter jurisdiction rule that Judge
22 Cottingham lost jurisdiction when the Court
23 adjourned the June 4th, 1990 term sine die.

24 As a result of that, we believe that the second
25 sentence -- the second sentence was on Indictment

1 5001. The second sentence was invalid. The only
2 sentence Mr. Carpenter had when he was taken into
3 custody by the Department of Corrections was the
4 25-year sentence that was imposed on him at the June
5 sentencing proceeding.

6 And I've attached a number of cases -- or I've
7 cited to a number of cases, Your Honor, regarding
8 the jurisdictional issue. And I think probably the
9 most recent one that I'm aware of is the State vs.
10 Tant case, which Mr. Watson and I handled before the
11 Department of Corrections, before the administrative
12 law court, before the court of appeals, and before
13 the South Carolina Supreme Court.

14 And in the Tant case the Court said -- cited
15 State vs. Campbell. I'm on page 4 of the opinion on
16 the right-hand side towards the -- excuse me, on the
17 left-hand side towards the bottom. State vs.
18 Campbell was a case which carried forward the case
19 law that started with State vs. Best in the '70s
20 which says that the longstanding rule is the trial
21 judge is without jurisdiction to consider a criminal
22 matter once the term of court during which judgment
23 was entered expired.

24 Judgment was entered on Indictment 5002 at the
25 June hearing. The sentencing -- the plea agreement

1 made them a single proceeding. The plea agreement
2 lists both indictment numbers, so it was a single
3 proceeding. Judgment was entered in June, so
4 judgment could not, at that point, be changed.

5 In the Tant case what happened was the trial
6 judge wrote a letter to the Department of
7 Corrections two and a half years after Mr. Tant was
8 taken into custody by the Department and said,
9 essentially, I know you have his sentence recorded
10 as 15 years, I meant it to be a 40-year sentence.

11 So, based on that communication from the trial
12 judge -- it was Judge Saunders, Wyatt Saunders --
13 the Department of Corrections changed Mr. Tant's
14 sentence from 15 years to 40 years and all the
15 subsequent things that went with it, a different
16 facility, you know, different -- the bad stuff that
17 went with a 40-year sentence, all that was done.

18 Mr. Tant brought his matter as an internal
19 grievance under Al Shabazz with the department of
20 corrections. The Department of Corrections said we
21 were fine with it. We took it to the Court of
22 Appeals. The court of -- excuse me. We appealed it
23 to the Administrative Law Court. The Administrative
24 Law Court said that the judge was allowed to
25 consider Judge Saunders' letter two and a half years

1 later --

2 THE COURT: The Department of Corrections.

3 MS. BALLARD: The Department of Corrections was
4 allowed to consider Judge Saunders' letter two and a
5 half years later.

6 We went to the Court of Appeals and the Court
7 of Appeals reversed the Administrative Law Court and
8 said that the sentencing sheets were ambiguous, they
9 had to be construed in favor of Mr. Tant and,
10 therefore, Mr. Tant had a 15-year sentence. The
11 Department of Corrections petitioned for cert to the
12 South Carolina Supreme Court, cert was granted, and
13 the Supreme Court said, citing to the language that
14 I've referred to you, that two and a half years
15 later, obviously, the judge did not have
16 jurisdiction to do anything affecting a defendant's
17 sentence.

18 And it cited to -- and, again, I'm on page 4.
19 It cited to several earlier decisions; Boan, which
20 was the most immediate one prior to Tant, which says
21 that a trial judge's fairness is compromised when a
22 trial judge increases a defendant's sentence outside
23 his presence. And in a situation such as the one on
24 appeal, due process requires that oral pronouncement
25 control over the conflicting written sentencing

1 order. That was in Boan.

2 What they went on to say is that because --
3 they say he had to focus on the sentencing sheets
4 and couldn't consider the transcript, but even if
5 they did consider the transcript, the transcript was
6 ambiguous as well. Taking the longstanding rule
7 that penal statutes are construed against the State
8 and in favor of the defendant, the Supreme Court, in
9 fact, affirmed the 15-year sentence and they
10 indicated that the Department of Corrections had
11 violated Mr. Tant's due process rights when they had
12 changed this sentence in response to the trial
13 judge's letter.

14 The same situation exists here. The trial
15 judge's jurisdiction --

16 THE COURT: But Tant wasn't a state grand jury
17 case.

18 MS. BALLARD: It was not.

19 THE COURT: State grand jury cases are assigned
20 to a specific judge by an order of the Chief Justice
21 and it belongs to that judge.

22 MS. BALLARD: And the language of this one,
23 which was issued in 1989, says that he had
24 jurisdiction to, quote, dispose, unquote, of the
25 case. And I went through a long explanation in my

1 memorandum as to why he disposed of the case at the
2 June hearing when he entered judgment on the one of
3 the two sentences.

4 Because the plea agreement, which is Exhibit 1
5 to the complaint, made these two indictments a
6 single case and because the trial judge accepted the
7 plea as a single plea on both indictments on a
8 single date, he was required to impose the sentences
9 at the same time.

10 THE COURT: Are there sentencing sheets from
11 the June term?

12 MS. BALLARD: There are sentencing sheets from
13 the June term -- there's a sentencing sheet from the
14 June term, it is Exhibit No. D to the complaint. We
15 have not located a sentencing sheet executed in June
16 on the 5001 indictment number; however, if you read
17 the trial judge's analysis and instructions, what he
18 was doing was determining whether to enhance the
19 sentence, inferring that he had already imposed both
20 sentences, and he was determining whether he was
21 holding Mr. Carpenter in contempt of the plea
22 agreement and that he was going to change the
23 sentence.

24 So it's clear from the language that the judge
25 used during the proceedings in August that he

1 believed the -- the August proceeding was to enhance
2 or change Mr. Carpenter's sentence, and that is what
3 he did.

4 THE COURT: Okay.

5 MS. BALLARD: The orders issued by the Chief
6 Justice, Your Honor, with reference to assignments
7 of a judge to preside over a particular term of
8 general sessions court, do not affect the weekly
9 term rule. And I've cited the authority in my
10 memorandum. Even in those cases, a term ends when
11 it adjourns sine die.

12 So whether he did it as an enhancement or
13 contempt or a change in the sentence, it's clear
14 that Judge Cottingham did not have authority to
15 change the sentence in August of 1990 to a
16 consecutive sentence, and, as a result, as Tant says
17 and other cases say, construing everything in a
18 light most favorable to Mr. Carpenter, then there
19 was a 25-year sentence, one 25-year sentence that
20 was entered in June.

21 We take the position that the judge lacked
22 subject matter jurisdiction to change the sentence
23 in August of 1990. We also take the position that
24 the judge lacked subject matter jurisdiction to hold
25 a trial on facts that were not subject of a criminal

1 charge against Mr. Carpenter. If you read the
2 transcript of the proceeding in August, they put up
3 witnesses that testified about things that had
4 nothing to do with the two indictments to which he
5 had already pled; they put up witnesses to suggest
6 that he's a bad guy and he might hurt someone, and
7 those matters were not subject to criminal charges
8 against Mr. Carpenter. The entire proceeding --

9 THE COURT: And all that was objected to?

10 MS. BALLARD: It was -- the proceeding itself
11 was objected to.

12 THE COURT: Right.

13 MS. BALLARD: Yes.

14 THE COURT: By Mr. Loftin?

15 MS. BALLARD: By Mr. Loftin, yes. All of that
16 was objected to.

17 And then the judge said, interestingly enough,
18 towards the conclusion of the hearing in August, he
19 said that there had been no evidence that
20 Mr. Carpenter had complied with his plea agreement,
21 sort of shifting the burden of proof to
22 Mr. Carpenter to prove that he had cooperated with
23 the State when clearly, under federal authority and
24 state authority, that would not have been the case.

25 I cited in my memorandum some federal decisions

1 from the Fourth Circuit that talk about the
2 procedure that is preferred in this type situation
3 which is to take the pleas and hold sentencing in
4 abeyance until the proceedings have occurred in
5 which they want the defendant's cooperation and then
6 to reconvene and impose the sentences. That's not
7 what happened here. For some reason, we don't know
8 why --

9 THE COURT: Well, you're making that
10 assumption, but there's a missing sentencing sheet.
11 Maybe that's what Judge Cottingham thought he was
12 doing. I mean, I can infer that just as much as you
13 can infer that he meant them all to run at the same
14 time. There's no second sentencing sheet from June
15 4th of 1990.

16 MS. BALLARD: Except for what he said, which
17 was that he was enhancing it, he was changing it, he
18 was holding Mr. Carpenter in contempt.

19 THE COURT: But if he sentenced him on 5001 and
20 made it consecutive, then that would be enhancing
21 it.

22 MS. BALLARD: Yes, which he does not have
23 authority to do. But the subject
24 matter jurisdiction ended with the June --

25 THE COURT: But he has an order from the

1 Supreme Court that says that's your case.

2 MS. BALLARD: No, sir. He has an order which
3 says all the grand jury cases arising out of a
4 particular grand jury number --

5 THE COURT: Right, belong to you.

6 MS. BALLARD: That grand jury number does not
7 appear anywhere in these indictments. That grand
8 jury number is not on the plea agreement, that grand
9 jury number is not on the sentencing sheets. We
10 have no way to know, other than speculation, that
11 this case arose from that 1989 order from the Chief
12 Justice.

13 Now, we've attempted to get the actual
14 week-by-week term assignments from Court
15 Administration, because those still have to be done
16 even in statewide grand jury cases.

17 THE COURT: Right.

18 MS. BALLARD: Because the language of the
19 orders, it's changed through the years. As I said
20 in my memo, the statewide grand jury process was
21 born in 1987 but it didn't really go into effect
22 until 1989.

23 THE COURT: Right.

24 MS. BALLARD: So when all this happened, they
25 were still kind of feeling their way. And there

1 have been multiple administrative orders issued by
2 the Chief Justice since then spelling out the
3 procedure for the statewide grand jury, but the 1989 .
4 order assigned to Judge Cottingham authority to
5 dispose of the cases. He disposed of the cases on
6 June 4th 19- --

7 THE COURT: How can you say that without a
8 second sentencing sheet?

9 MS. BALLARD: Because of what he said in August
10 when he said, I'm going to change the sentence on
11 the --

12 THE COURT: He did change the sentence, he
13 added a consecutive sentence.

14 MS. BALLARD: Which he didn't have authority to
15 do.

16 THE COURT: But you can't say he didn't have
17 the -- that he completely and totally disposed of
18 the case when he didn't sentence him on one of the
19 charges.

20 MS. BALLARD: Well, he thinks he did, because
21 the way he talks about it in August is he says,
22 we're here to determine -- I'm going to hold a
23 hearing to determine whether his sentence needs to
24 be changed.

25 THE COURT: Right.

1 MS. BALLARD: But the sentencing sheet for the
2 5001 sentence was not signed until August 9th, and
3 that's Exhibit F --

4 THE COURT: Right.

5 MS. BALLARD: -- to the complaint. So our
6 position is --

7 THE COURT: But your position can be just as
8 true in the opposite. I mean, your inference as to
9 what you think was in Judge Cottingham's mind can be
10 read exactly the opposite.

11 MS. BALLARD: I don't have to read what was in
12 his mind; I can read his words.

13 THE COURT: Right. But his actions were
14 different.

15 MS. BALLARD: We have not located a sentencing
16 sheet for 5001.

17 THE COURT: But you have, it's in August of
18 1990.

19 MS. BALLARD: The -- there may have been an
20 earlier one, we don't know.

21 THE COURT: Well, let's not speculate.

22 MS. BALLARD: Right. We don't know.

23 THE COURT: Okay. This is not a speculation
24 hearing --.

25 MS. BALLARD: Correct.

1 THE COURT: -- this is a hearing.

2 MS. BALLARD: Right.

3 THE COURT: There is no sentencing sheet from
4 June of 1990 on Indictment No. 5001.

5 MS. BALLARD: That's correct.

6 THE COURT: There is a sentencing sheet on
7 Indictment 5001 from August of 1990.

8 MS. BALLARD: Which was entered without subject
9 matter jurisdiction to do so.

10 THE COURT: In your opinion.

11 MS. BALLARD: Yes, sir.

12 And I believe the Tant case supports that, the
13 Campbell case supports that --

14 THE COURT: Neither of which were state grand
15 jury cases.

16 MS. BALLARD: I don't think that changes the --
17 and I cited the case law in my memorandum. Each
18 week of court is a separate term of court, and the
19 case law is clear that a trial judge's jurisdiction
20 terminates when the court term, that weekly term,
21 adjourns sine die.

22 If you take the argument that Your Honor is
23 posturing -- and I know you've not ruled that way,
24 but the argument that Your Honor is taking, that's
25 an absurd result. Under that argument, Judge

1 Cottingham, even today, still has jurisdiction under
2 that 1989 order. If you take the --

3 THE COURT: The case would be disposed of on
4 August the 9th of 1990.

5 MS. BALLARD: Arguably. But --

6 THE COURT: Because that's when Mr. Carpenter's
7 case officially ended.

8 MS. BALLARD: Arguably.

9 THE COURT: Unless there was a motion to
10 reconsider or something like that.

11 MS. BALLARD: Well, there was. As a matter of
12 fact, in August, what the trial judge said was --
13 what Judge Cottingham said is, okay, I'm done now,
14 I'm entering judgment on 5001, but I will consider
15 any motions that anybody wants to bring before me in
16 the future which indicate that Mr. Carpenter has
17 complied. So Judge Cottingham, in August of 1990 --

18 THE COURT: Hasn't complied with what?

19 MS. BALLARD: He hasn't complied with the plea
20 agreement. What he said was -- and I'll find a page
21 number for you. What he said is, I'm leaving it
22 open so that either side can come back before me at
23 any time in the future and indicate -- put up
24 testimony that indicates that Mr. Carpenter has, in
25 fact, complied with the plea agreement, and in that

1 case, I may change the sentence back to a concurrent
2 sentence.

3 THE COURT: Okay.

4 MS. BALLARD: So he attempted to -- even beyond
5 the August proceeding, he attempted to continue to
6 have jurisdiction even though he had disposed of the
7 case. And, again, he thought that was appropriate
8 under the order giving him grand jury authority to
9 dispose of the cases.

10 And he specifically said, and I think it was in
11 the August hearing: I know that jurisdiction ends
12 when the term ends sine die, but I don't know what
13 the Court is going to say in this case because I'm
14 the grand jury judge.

15 And he also said in August: I've presided over
16 all these grand jury cases, I've heard the testimony
17 in all of these cases, I believe Mr. Carpenter was a
18 kingpin, I believe Mr. Carpenter was just a really
19 bad guy. And he used the knowledge he had gained
20 from all these other grand jury cases in his mind in
21 August to decide to change Mr. Carpenter's sentence
22 on the second indictment from concurrent to
23 consecutive.

24 So the third ground that we've set forth in our
25 complaint is that the trial judge violated

1 Mr. Carpenter's due process rights knowledge by
2 using his own personal knowledge, gained from other
3 cases that he gained while sitting as the presiding
4 judge over the statewide grand jury, to make a
5 determination to deviate from the plea agreement.
6 The plea agreement says that the --

7 THE COURT: The plea agreement says that he
8 gets a concurrent sentence if he cooperates.

9 MS. BALLARD: Correct.

10 THE COURT: It doesn't say he automatically
11 gets a concurrent sentence --

12 MS. BALLARD: Correct. He --

13 THE COURT: -- it's a conditional plea
14 agreement upon his cooperation.

15 MS. BALLARD: Except --

16 THE COURT: Except what?

17 MS. BALLARD: The judge said in April when he
18 took the plea: I'm going to comply with this plea
19 agreement --

20 THE COURT: Right.

21 MS. BALLARD: -- I'm going to enter the
22 sentences according to this plea agreement.

23 THE COURT: Right.

24 MS. BALLARD: And then he went on to change his
25 mind and impose a consecutive sentence in 1990.

1 THE COURT: Yeah, I know.

2 MS. BALLARD: It's our position that he didn't
3 have subject matter jurisdiction to do that.

4 THE COURT: Okay.

5 MS. BALLARD: And I think that the Tant case --

6 THE COURT: Was this raised on appeal?

7 MS. BALLARD: Your Honor, there's been a lot of
8 litigation.

9 THE COURT: The answer is yes or no.

10 MS. BALLARD: Not that I'm aware of.

11 THE COURT: Okay. Was it raised on PCR?

12 MS. BALLARD: There was a subject matter
13 jurisdiction issue raised on one of the PCRs, but it
14 wasn't this subject matter jurisdiction issue.

15 THE COURT: Okay.

16 MS. BALLARD: There have been numerous --

17 THE COURT: Did he file an appeal from his
18 second sentencing?

19 MS. BALLARD: I'm sorry?

20 THE COURT: Did he file an appeal from his
21 second sentencing?

22 MS. BALLARD: No, sir. And our position, of
23 course, is that it's subject matter jurisdiction, so
24 it can be raised at any time. He wasn't required to
25 raise it on appeal, he wasn't required to raise

1 it --

2 THE COURT: Did he file a motion to reconsider
3 the sentence?

4 MS. BALLARD: He did not.

5 THE COURT: Okay.

6 MS. BALLARD: I'm not positive about that.

7 THE COURT: Okay.

8 MS. BALLARD: I'm not positive about that. He
9 may have. If he did, it's not part of this record.
10 I got it included among the exhibits. I'm not
11 absolutely sure about that.

12 THE COURT: So your theory is this: The
13 Supreme Court, through Court Administration, assigns
14 a specific judge to handle a state grand jury case.
15 A defendant pleads with the cooperation agreement
16 and, under your theory, the judge never has the
17 authority to make a determination on whether or not
18 that person complied with the terms of the
19 agreement.

20 MS. BALLARD: I think he could have done that
21 in June. I think he could have held that hearing in
22 June. But what we decided to do was to give the
23 State a heads-up that he was going to hold a whole
24 new hearing and let them bring in witnesses --

25 THE COURT: Maybe what he was trying to do was

1 give your client a heads-up and say get your act
2 together between now and the next hearing --

3 MS. BALLARD: It could --

4 THE COURT: -- and I'll give you a concurrent
5 sentence, because you can go back and cooperate with
6 the agents and get back on their good side, and then
7 you're going to get your concurrent sentence, which
8 apparently your client did not do.

9 MS. BALLARD: He did not do. And subject
10 matter jurisdiction ended when the court adjourned
11 sine die the week of June 4th, 1990.. The case law
12 that talks about subject matter jurisdiction
13 adjourning sine die term by term, week by week, has
14 not been changed at all, nor could it be, by the
15 statutes relating to the statewide --

16 THE COURT: So what if Court Administration
17 gave Judge Cottingham another -- I mean, obviously
18 Court Administration had to give Judge Cottingham
19 another state grand jury term of court during the
20 week of August 9th in 1990.

21 MS. BALLARD: We don't have any orders to
22 indicate that.'

23 THE COURT: And you don't have any orders to
24 indicate the contrary.

25 MS. BALLARD: I've checked with Court

1 Administration, they don't have any orders from
2 1990.

3 THE COURT: Right. So the answer is you don't
4 have one to indicate either way?

5 MS. BALLARD: No, I don't.

6 THE COURT: But if the Supreme Court gave him
7 another state grand jury term of court to dispose of
8 that state grand jury case, how is he not sitting
9 there with jurisdiction?

10 MS. BALLARD: If such an order existed, he
11 probably would have had jurisdiction.

12 THE COURT: Right. But we don't know.

13 MS. BALLARD: We don't know. All we have --

14 THE COURT: So in your -- I mean, in theory, in
15 this hearing, the state grand jury judge assigned to
16 the case showed up -- under your theory, the state
17 grand jury judge assigned to the case showed up, the
18 state grand jury prosecutors showed up, the state
19 grand jury clerk of court showed up -- well, yeah, I
20 mean, where is the August 2009 sentencing sheet?

21 MS. BALLARD: That's F.

22 THE COURT: The --

23 MS. BALLARD: Yes. It says state grand jury
24 clerk.

25 THE COURT: Right. And, I mean, the state

1 grand jury clerk of court showed up, a court
2 reporter showed up --

3 MS. BALLARD: Right.

4 THE COURT: -- but no order existed from the
5 Supreme Court or Court Administration giving him
6 authority to have an entire hearing?

7 MS. BALLARD: Correct.

8 THE COURT: No, that's not correct. The answer
9 is we don't know. So all those people showed up --

10 MS. BALLARD: Right.

11 THE COURT: -- magically in one place, disposed
12 of one case, including a court reporter, including
13 the state grand jury clerk of court driving from
14 Columbia to Horry County -- I assume it was in
15 Horry --

16 MS. BALLARD: I think it was Chesterfield.

17 THE COURT: -- or Chesterfield County, and
18 everybody from the attorney general's office showed
19 up, but I'm just supposed to assume that no order
20 existed granting a term of court in Chesterfield
21 where there's about four terms of court a year?

22 MS. BALLARD: Here's why the conclusion that
23 I'm asserting has to be drawn --

24 THE COURT: But you agree you're inferring no
25 order exists even though all those people showed up?

1 MS. BALLARD: I'm inferring no order exists.

2 THE COURT: So the state grand jury clerk of
3 court took her office to Chesterfield County to hold
4 a hearing in front of a circuit court judge with no
5 authority from Court Administration or the Supreme
6 Court, is your theory?

7 MS. BALLARD: Correct.

8 THE COURT: And the Attorney General's Office
9 drove to Chesterfield County with no term of court
10 assigned?

11 MS. BALLARD: Correct. And the reason we know
12 that to be the case -- and I know you're saying we
13 infer it. But the reason we know that to be the
14 case is because the Chief Justice's authority to
15 assign judges per term of court is exclusive to the
16 Chief Justice under Article 5, Section 4 of the
17 South Carolina Constitution. The statewide grand
18 jury statutes cannot affect the Chief Justice's
19 authority over terms of court --

20 THE COURT: I agree with that.

21 MS. BALLARD: -- so even if an order was issued
22 in 1989 giving Judge Cottingham continuing
23 jurisdiction until cases were disposed of, there
24 still had to be an order assigning him to a term of
25 court --

1 THE COURT: Right, that's what I'm saying.

2 MS. BALLARD: -- and we don't have it.

3 THE COURT: No. It doesn't -- we don't know
4 that it doesn't exist, but that doesn't mean it
5 didn't happen.

6 MS. BALLARD: Well, we know it didn't exist
7 because -- we don't know it didn't exist. We know
8 that the term of court for June 4th, 1990, adjourned
9 sine die. We have no evidence that there was an
10 order assigning continuing jurisdiction in August.
11 Our position is he could not because the single plea
12 agreement was a single proceeding. He had to either
13 enter both --

14 THE COURT: If there is an order that says
15 Judge Cottingham had state grand jury jurisdiction
16 in Chesterfield County during the week of August
17 9th, 1990, your whole argument fails.

18 MS. BALLARD: My argument on that
19 jurisdictional issue fails, yes, sir. Court
20 Administration tells me they have no orders from
21 1990.

22 THE COURT: That's part of the problem why
23 you're not supposed to handle these issues 27 years
24 later.

25 MS. BALLARD: Well, I would point out that, for

1 a number of reasons, only one of which we've argued
2 so far, Mr. Carpenter is now eligible to be released
3 and it is only now when he is eligible to be
4 released that he can bring a writ of habeas corpus.
5 Judge Toal ruled --

6 THE COURT: When was he first eligible to be
7 released?

8 MS. BALLARD: He was eligible, the first time,
9 in 2015. If you follow the documents that are
10 attached to the complaint, starting with G, his
11 completion date on Exhibit G is November 23rd, 2016;
12 on Exhibit H, his completion date is on -- on the
13 second page of Exhibit H, his completion date is
14 July 7th, 2015; if you look at Exhibit J, his
15 max-out date was April 7th, 2017; if you look at
16 Exhibit K, his max-out date was 2019; if you look at
17 Exhibit L, his max-out date was 2019; if you look at
18 Exhibit M, his max-out date was November 7th, 2016;
19 if you look at Exhibit N, his max-out date was
20 November 7th, 2016; if you look at Exhibit O, his
21 max-out date was February 7th, 2018; if you look at
22 Exhibit P -- all these are Department of Corrections
23 records, Your Honor --

24 MR. WLODARCZYK: Your Honor, I would just note
25 this goes to the issue of the correctional max-out

1 date. The sentencing sheets determine his sentence,
2 which would be our argument --

3 THE COURT: Right.

4 MR. WLODARCZYK: -- later on. So those two
5 sentencing sheets are 50. We would concede that the
6 max-out dates have been altered, but his sentence
7 was 50 years to what the SCDC had.

8 MS. BALLARD: Exhibit P reflects his max-out
9 date as November 13th, 1991. And finally -- excuse
10 me. In Q -- Exhibit Q indicates that his max-out is
11 4/7/2040. And that's -- I think the Department of
12 Corrections is now acknowledging that they changed
13 Mr. Carpenter's max-out date administratively
14 without notice to him, which, under the Tant
15 decision, cannot be done. Under the Tant
16 decision --

17 MR. WLODARCZYK: We don't acknowledge that,
18 Your Honor.

19 MS. BALLARD: They acknowledge they changed it;
20 they don't acknowledge that under the Tant decision
21 they were not allowed to change it. But the
22 language of the Tant case clearly says that they are
23 not --

24 THE COURT: Tant was the judge telling them to
25 change it two and a half years later, not them

1 changing it internally; right?

2 MR. WLODARCZYK: Also, the Tant case involved
3 an ambiguous sentence where SCDC determined what the
4 sentence should be. In this situation, when Your
5 Honor looks at the two sentencing sheets, there's no
6 way that you can get any ambiguity 25 consecutive to
7 25.

8 THE COURT: Okay.

9 MS. BALLARD: Each of those sentencing -- or
10 those offender summaries that I read to Your Honor
11 which show max-out dates from 2015 to 2019 all
12 showed a 50-year sentence. We had a number of
13 things that happened with the Department of
14 Corrections that were illegal that could not be done
15 to alter Mr. Carpenter's max-out date.

16 But before I leave the jurisdictional issue
17 with Judge Cottingham, in addition to him not having
18 jurisdiction to convene to change the sentence in
19 August of 1990, he did not have jurisdiction of any
20 kind to try Mr. Carpenter on charges that were not
21 subject of a criminal arrest warrant, they were not
22 subject to an indictment, they were not subject to a
23 right of a jury trial; he was given none of his
24 protections, there were just a parade of witnesses
25 that were brought in that testified about things

1 that nobody had any notice of. So that proceeding
2 itself --

3 THE COURT: So how is the judge supposed to
4 make a determination on whether or not somebody
5 cooperated when there's a dispute?

6 MS. BALLARD: What the case law sentencing is
7 that the sentencing is done -- it doesn't say at one
8 time, it just says the sentencing is done where
9 there's a hearing. And it's a federal court case,
10 Your Honor --

11 THE COURT: Well, you don't get the sentence in
12 federal court at your original plea hearing.

13 MS. BALLARD: And he didn't here either.

14 THE COURT: Right. So --

15 MS. BALLARD: The case that I cited in our
16 memorandum, Your Honor, is United States vs.
17 Simmons. And what Simmons says is a plea bargain --
18 the Government's obligation to make a recommendation
19 arises only if a defendant performs his obligation.
20 But then it goes on to say that the Government can't
21 make that determination, there has to be a hearing
22 by a judge.

23 THE COURT: Right. So how is that not -- I
24 mean, let's skip your subject matter jurisdiction
25 argument. How is that not what happened?

1 MS. BALLARD: How can they charge him -- they
2 held a hearing without filing a charge against him.

3 THE COURT: You don't have to file a charge to
4 have a cooperation hearing.

5 MS. BALLARD: I don't know how you get subject
6 matter jurisdiction without filing something to
7 bring him before the Court of general sessions
8 court. And the federal --

9 THE COURT: You want the benefit of the
10 agreement, but then you don't want to put the
11 agreement into effect.

12 MS. BALLARD: The agreement required sentencing
13 to be done on both crimes on the same date. The
14 agreement did not contemplate an adjournment and a
15 coming back at a later date to decide whether or not
16 Mr. Carpenter, on the basis of evidence that was
17 brought in that day, whether his sentence should be
18 enhanced.

19 And I can only go by what Judge Cottingham
20 said. He said he was enhancing the sentence, so he
21 was reading it as if he had done what was required
22 in the plea agreement and done with concurrent
23 sentences. We don't have a sentencing sheet to
24 verify that, but all we have is what Judge
25 Cottingham said is he was changing the sentence,

1 which he clearly did not have the right to do.

2 THE COURT: Well, how is a recommendation
3 binding on Judge Cottingham anyway?

4 MS. BALLARD: Well, it wasn't, but he said he
5 was going to accept it.

6 THE COURT: Right, which would also accept the
7 cooperation agreement.

8 MS. BALLARD: Right. And he said that he
9 accepted it and he imposed the sentences -- he
10 imposed the sentence in April.

11 THE COURT: Right.

12 MS. BALLARD: But its jurisdiction then ended.
13 He did not have jurisdiction because the Chief
14 Justice -- there's no evidence that the --

15 THE COURT: So who filed the motion to say,
16 wait, wait, wait, Judge Cottingham, in June of 1990,
17 you didn't sentence him on both indictments?

18 MS. BALLARD: Mr. Loftin made that argument on
19 the record.

20 THE COURT: Okay. So was that appealed?

21 MS. BALLARD: It was not.

22 THE COURT: Okay.

23 MS. BALLARD: But, again, it's subject matter
24 jurisdiction, so it need not have been appealed, it
25 can be raised at any time.

1 The two arguments on Judge Cottingham's lack of
2 authority, he lacked jurisdiction to enhance the
3 sentence in the August hearing and he lacked
4 jurisdiction to conduct a sentencing hearing after
5 the Court had adjourned sine die on a whole new
6 proceeding without a charge of any kind, an arrest
7 warrant, an indictment, anything. And the federal
8 case doesn't say how he has to be -- how he has to
9 do it.

10 U.S. vs. Simmons doesn't say exactly how you do
11 it, it just says that you do it later, you hold a
12 hearing. We would submit that you have an
13 obligation to file a document, an indictment, an
14 arrest warrant, or something, charging the defendant
15 with not complying with the plea agreement. That's
16 a new matter.

17 THE COURT: That's not even a crime.

18 MS. BALLARD: It is under the plea agreement.

19 THE COURT: How?

20 MS. BALLARD: Because the trial judge is given
21 the authority to change the sentence. It's a
22 significantly new issue, Your Honor. If the trial
23 judge is given authority to change the sentence from
24 25 years to 50 years, that's a liberty interest that
25 requires due process. That's a liberty interest --

1 THE COURT: I mean, this plea agreement is
2 clear as day. If he doesn't cooperate, they can ask
3 for the maximum sentence --

4 MS. BALLARD: And they did.

5 THE COURT: -- period.

6 MS. BALLARD: Yes.

7 THE COURT: And they did. And he got it
8 because he didn't cooperate.

9 MS. BALLARD: He only could have gotten it in
10 June, he could not have gotten it later.

11 THE COURT: So -- okay. All right. Keep
12 going.

13 MS. BALLARD: All right. Thank you, Your
14 Honor.

15 With reference to SCDC, once Mr. Carpenter --
16 and I've gone through these documents already. Once
17 Mr. Carpenter was taken into custody at the
18 department of corrections, for the first 20 years
19 his max-out date was anywhere between 2015, 2018, a
20 couple of them said 2019.

21 What we now know happened, in 2010, if you'll
22 look at Trial Court Exhibit No. A in the bound
23 exhibits --

24 THE COURT: I'm there.

25 MS. BALLARD: Okay. An inmate named Carlos

1 Gonzalez wrote to the Chief Justice -- it's page 2
2 of Exhibit A -- and he said I'm being illegally
3 held. In response to that, the clerk of court, on
4 ~~February 3rd, 2010,~~ sent Mr. Gonzalez's letter to
5 John Osment who was then the director of the
6 department of corrections. Mr. Osment then
7 undertook an audit, which is contained as Exhibit B
8 of the trial court exhibits.

9 And you'll see what they did is they went
10 through and they pulled the records on all inmates
11 still in custody who had a drug trafficking offense
12 prior to January 1st, 1996, with an incarceration
13 sentence of 25 years or more, and they went through
14 and they audited these sentences.

15 If you'll look at the last page of Exhibit B,
16 you see the results of the audit. The results of
17 the audit were -- the highlighted case, 181783, is
18 Mr. Carpenter's.

19 THE COURT: Okay.

20 MS. BALLARD: The Department of Corrections
21 updated his sentence in its records as a result of
22 this audit in 2011. They updated it to mandatory
23 minimum. There are four others, I believe, or
24 perhaps five others, that they updated the same way.

25 A number of ones, the second and third ones,

1 for instance, those people had already been paroled,
2 so they were not subject to having their sentences
3 altered. One of them died during the audit, that's
4 the first one, so he didn't luck out either. A
5 couple of them are -- need to pull the record, we
6 don't know. One toward the bottom, the judge wrote
7 on the sentence -- sentencing sheet that the inmate
8 was parole eligible, so they couldn't change his
9 sentence.

10 What they did in 2011 was, purely
11 administratively, without notice to Mr. Carpenter or
12 anyone else and in response to a letter from the
13 South Carolina Supreme Court, they conducted an
14 administrative audit and they changed
15 Mr. Carpenter's status, they changed his max-out
16 date, they did all of that without offering him an
17 opportunity to be heard, they did all of that in
18 violation of his due process rights.

19 Now we know, as a result of subsequent
20 correspondence with the Department of Corrections,
21 Exhibit C, Mr. Carpenter objected and said, you
22 can't change my sentence this far in. And Exhibit C
23 is a letter to Mr. Carpenter dated December 21st,
24 2012. And he says in the last paragraph -- she says
25 in the last paragraph, Ms. Gaston, that they did an

1 audit in 2011 -- and she was creative with her
2 wording -- to ensure programming was correct for the
3 sentence.

4 She didn't say we changed it, she didn't say
5 that directly to Mr. Carpenter. But under Exhibit
6 D, which is an e-mail from the Department of
7 Corrections to John Osment -- by this time John
8 Osment was a private-practicing lawyer and
9 Mr. Carpenter has retained him -- in this e-mail
10 from the Department of Corrections to Mr. Osment
11 dated April 20th, 2015, Exhibit D, his record was
12 updated in 1997 per the drug statute to show it was
13 non-parolable. Well, we didn't know about that one.

14 So there had been two changes by the Department
15 of Corrections; first in 1997, which would be seven
16 years into his sentence, they changed it to
17 non-parolable. We didn't know anything about that.
18 But we do know, as a result of Exhibit C and Exhibit
19 D, that they changed his sentence by changing his
20 max-out date, which they cannot do without notice to
21 him. And the Tant case and the Carpenter cases are
22 very clear about that; they couldn't do what they
23 did in 1997 and they couldn't do what they did in
24 2011. As a result, the change in his max-out date
25 was unconstitutional, and that has to be vacated.

1 The other -- Exhibit E is additional correspondence
2 between Mr. Osment and the Department of Corrections
3 as to why and how Mr. Carpenter's sentence was
4 changed.

5 And then the last basis for our claim against
6 the Department of Corrections is that -- and I've
7 set this forth in the memo. The Department of
8 Corrections gave Mr. Carpenter, as indicated on the
9 offender summaries, work credits, they gave him
10 educational credits, they gave him good-time
11 credits, and then they took them away. And the case
12 law says they can't do that. Once --

13 THE COURT: Haven't you already litigated that
14 issue?

15 MS. BALLARD: Had he litigated it? No.

16 THE COURT: Had he already litigated that
17 issue?

18 MS. BALLARD: No, not that I'm aware of.

19 THE COURT: Okay.

20 MS. BALLARD: I stand to be corrected if he
21 has, but I'm not aware that he did.

22 But the case law is very clear that the liberty
23 interests, State -- Furtick vs. South Carolina
24 Department of Corrections -- Furtick vs. South
25 Carolina Department of Corrections, Your Honor,

1 indicates that earned credit -- earned and already
2 entered on the record, like we have here, are
3 state-protected liberty interests that the
4 Department of Corrections cannot take away.

5 MR. WLODARCZYK: I would just note further it's
6 been cited by Howard, Your Honor.

7 THE COURT: Okay.

8 MR. WLODARCZYK: It's 399 SC 618.

9 MS. BALLARD: Your Honor, Howard didn't do that
10 exactly. What Howard did was said that if an inmate
11 claims he should have earned credits but he didn't,
12 that's not property interest; if he did earn credits
13 and they were taken away, that is a property
14 interest. So the Howard case is completely
15 different.

16 What Howard says is if you're arguing the
17 Department of Corrections should have given him
18 credits and they didn't, that's one issue; if you're
19 arguing that they give him credits and took them
20 away, that is a deprivation of a property right,
21 which violates due process of law.

22 So they did that twice; first in 1997 under an
23 expose facto theory, they changed his sentence to
24 non-parolable. I don't know how or why, but they
25 did. And then in 2011, they changed his max-out

1 date from 2015/16 to 2040. It's clear that his
2 max-out date was a protected liberty interest that
3 he was entitled to retain, and that taking away that
4 max-out date was a deprivation of that property
5 right that had been created by 20 years' worth of
6 offender summaries that indicated that that was his
7 max-out date. One of them actually indicated that
8 he was eligible for work release, and that somehow
9 disappeared as well, we don't know how.

10 And last, Your Honor, we've argued equal
11 protection in that the Department of Corrections
12 violated Mr. Carpenter's equal protection rights.
13 Exhibit F are records related to another inmate,
14 Bobby Horne, who was charged and pleaded guilty
15 under the same indictment -- or one of the same
16 indictments that Mr. Carpenter pleaded to.

17 He was one of the cases, apparently, because
18 it's got a 47 case number, that was under the
19 statewide grand jury matter; same as
20 Mr. Carpenter's, arguably, although we don't know
21 that for sure. Mr. Horne was given work credits, he
22 was given educational credits, he was given the
23 right to parole eligibility, he was given the right
24 to work release, and he was given the right to
25 supervised furlough.

1 Mr. Horne had a 25-year sentence. Mr. Horne
2 was released on supervised furlough on March --
3 excuse me, December 4th, 2001, and was discharged
4 from custody of the Department of Corrections on
5 March 1st, 2002. So we have two inmates sentenced
6 on the identical indictment, one of which is given
7 all the credits that he's entitled to earn, one of
8 which is not; one of which is released in 2001, one
9 of which is not. That's equal protection.

10 Now, the Department of Corrections' argument
11 is, whoops, Mr. Horne slipped through, I'm sorry.
12 Mr. Carpenter is entitled to the same exact
13 treatment that Mr. Horne received. Mr. Horne plans
14 to be here in the morning to testify as to the
15 validity of these records because I didn't know for
16 sure if the Department of Corrections was going to
17 object to these records.

18 But I found out when I spoke to Mr. Horne, not
19 only was he released in 2002, he has been pardoned.
20 And Mr. Carpenter remains in jail and, under the
21 Department of Corrections' theory, he will remain in
22 jail until 2040, which is fiction because he won't
23 live that long.

24 As a result of what Judge Cottingham did
25 unlawfully, as a result of what the Department of

1 Corrections has done multiple times by violating
2 Mr. Carpenter's due process rights on multiple
3 occasions, we seek a petition for writ of -- a writ
4 of habeas corpus ordering his immediate release on
5 the basis that, A, there was no jurisdiction to
6 impose the second 25-year sentence in August of
7 1990.

8 But even if there was, once he went into the
9 custody of the Department of Corrections, the
10 Department of Corrections increased his sentence
11 unlawfully; they gave him credits and took them
12 away, they gave him parole eligibility and they took
13 it away, they gave him supervised released authority
14 and they took it away.

15 The credits that they gave him and then
16 didn't -- and then took away and did not continue to
17 give him, even if we had a 50-year sentence, it's
18 time for him to be released. Even if Judge
19 Cottingham had jurisdiction, because of the
20 treatment of Bobby Gene Horne getting all of the
21 credit on the same exact sentence on the same exact
22 indictment, Mr. Carpenter would have earned enough
23 credits to be released on that 50-year sentence.

24 THE COURT: But he was told at his plea, you
25 have to serve 25 years.

1 MS. BALLARD: And he has, he's been there 27
2 years.

3 THE COURT: Yeah.

4 MS. BALLARD: He's been there 27 years.
5 Mr. Horne also received the same sentence, mandatory
6 25 years.

7 THE COURT: But Mr. Carpenter received a
8 50-year sentence.

9 MS. BALLARD: He did. But if he had a 50-year
10 sentence --

11 THE COURT: But how do you know Judge
12 Cottingham had authority to sentence him on June the
13 4th of 1990?

14 MS. BALLARD: We don't. I've actually tried to
15 figure that out.

16 THE COURT: So you don't know that either?

17 MS. BALLARD: I don't know that either.

18 THE COURT: So you're okay with that one, even
19 though you can't prove it, but the next one is bad
20 because you can't prove it?

21 MS. BALLARD: The next one is illegal.

22 THE COURT: Right. But for all you know, based
23 upon your same theory of your case, the June 4th,
24 1990 hearing was illegal too.

25 MS. BALLARD: No. I think under the statewide

1 grand jury in 1999 -- or 1989 order, the
2 disposition of the case --

3 THE COURT: But you can't prove that there was
4 a state grand jury term of court that week.

5 MS. BALLARD: I don't need to prove there was a
6 statewide grand jury term of court that week.

7 THE COURT: Yes, you do, or otherwise he
8 doesn't have authority to hear the case if there was
9 no statewide grand jury term of court that week.

10 MS. BALLARD: He has to have an assignment by
11 the Chief Justice.

12 THE COURT: Right. And where is that?

13 MS. BALLARD: We don't know.

14 THE COURT: Right.

15 MS. BALLARD: We don't know.

16 THE COURT: So you can't prove that the June
17 4th, 1990 hearing was valid either.

18 MS. BALLARD: I can't prove that. I don't
19 think I have to prove that. I think what I --

20 THE COURT: Right. But it's the same -- you
21 want to say the August hearing had no validity from
22 Court Administration --

23 MS. BALLARD: Right.

24 THE COURT: -- and from the Supreme Court, even
25 though all these people mysteriously showed up in

1 the middle of nowhere South Carolina to do a hearing
2 just because Judge Cottingham decided it and he
3 didn't bother to tell Court Administration --

4 MS. BALLARD: I'm sure he did.

5 THE COURT: -- he just made all these people
6 travel, but no document exists creating the June
7 4th, 1990 term either, but that doesn't really
8 matter.

9 MS. BALLARD: Well, at this point, 27 years
10 later, it doesn't matter, no, because Mr. Carpenter
11 has already served that 25-year sentence; he's
12 served every day of it when he shouldn't have served
13 every day of it because he was entitled to work
14 release, he was entitled to credits --

15 THE COURT: The statute said he had to do day
16 for day.

17 MS. BALLARD: The --

18 THE COURT: He was told at his guilty plea he
19 had to do day for day.

20 MS. BALLARD: Day to day for 25 years is what
21 he was told at his guilty plea.

22 THE COURT: Right.

23 MS. BALLARD: And --

24 THE COURT: And he said he agreed with that, he
25 understood that, and he understood the risks.

1 MS. BALLARD: And he's done it.

2 THE COURT: Right.

3 MS. BALLARD: He's served 25 years day to day.

4 But what we now know is that he was entitled to
5 work-release credits --

6 THE COURT: How do you know that?

7 MS. BALLARD: Because he was given them. They
8 gave them to him. He earned them.

9 THE COURT: So because they gave them to him,
10 that means he's entitled to them?

11 MS. BALLARD: He earned them. Yes.

12 THE COURT: The South Carolina Department of
13 Corrections can completely and totally ignore the
14 South Carolina Legislature and give somebody
15 whatever credits they want to? Isn't that just a
16 reverse of Tant?

17 MS. BALLARD: No.

18 THE COURT: I mean, that's exactly -- here's
19 the South Carolina Department of Corrections giving
20 somebody credit for which they have no right to give
21 anybody credit for in direct violation of what the
22 Legislature says and pursuant to the statute.

23 MS. BALLARD: What the Supreme Court has said
24 is they don't have to give him the credits, but if
25 they do, which they did, they cannot take them away,

1 and they did. They gave him those credits and they
2 took them away. They had his sentence down as
3 parolable until 1997 and they changed it; a liberty
4 interest, changing his sentence from parolable to
5 non-parolable, changing his sentence from eligible
6 for work release, taking that away from him; taking
7 away all of the credits that Mr. Horne was given on
8 the exact same --

9 THE COURT: Okay. So because somebody -- some
10 eight-dollar-an-hour employee of the Department of
11 Corrections made a mistake, he gets it all?

12 MS. BALLARD: No, sir.

13 THE COURT: Is that the theory?

14 MS. BALLARD: No, sir. It's interesting though
15 that you raised that because when the Department of
16 Corrections petitioned for rehearing after the Tant
17 decision from the South Carolina Supreme Court
18 decision, its argument was, we have
19 eight-dollar-an-hour clerks entering this sentencing
20 information into the record, you can't expect us to
21 get it right.

22 And in Tant they said, we understand -- I'm
23 trying to find the language. Tant's case involves
24 the routine practice undertaken by the Department in
25 discerning an inmate's sentence and how it addresses

1 situations where it subsequently discovers the
2 original interpretation may be erroneous.

3 So each time they changed his max-out date
4 under Tant, they had to give him a hearing. Each
5 time they --

6 THE COURT: What kind of hearing?

7 MS. BALLARD: We don't know. Probably an Al
8 Shabazz hearing under the ALC. When they changed
9 them in 1997, that should have been pursuant to a
10 hearing. And I think he would have won that under
11 the expose facto law because the case law says, and
12 I don't remember which one it is but it's cited in
13 my memo, if somebody goes in and his sentence is
14 indicated as a parolable sentence when he goes into
15 custody and the statute subsequently changes to make
16 it non-parolable, you can't apply it retroactively.
17 The Supreme Court says that.

18 So in 1997 when that change was made, he would
19 have been successful in preventing that change from
20 having been made. He would have been successful
21 when these credits were taken away from him -- and I
22 don't remember what year they were taken away from
23 him -- and he should be successful today.

24 THE COURT: 2011.

25 MS. BALLARD: That's when they changed his

1 max-out date.

2 THE COURT: Right.

3 MS. BALLARD: That's not when they took his
4 credits away. They took his credits away before.
5 What they did in 2011 is they corrected his max-out
6 date and --

7 THE COURT: To what it should have been
8 pursuant to the agreement law?

9 MS. BALLARD: No. They -- the original
10 sentencing sheets -- excuse me. The original
11 offender summaries say it's a 50-year sentence.
12 There was no mistake. They entered a 50-year
13 sentence. And they said, based on that 50-year
14 sentence, your max-out date is 2016; they said,
15 based on that 50-year sentence, your max-out date is
16 2015. They didn't change the sentence, they changed
17 the max-out date, which, legally, is the same
18 effect. It is a property right that was taken away
19 from Mr. Carpenter without due process of the law.

20 THE COURT: Okay. I've heard enough.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: What's SCDC got to say?

23 MR. WLODARCZYK: May it please --

24 THE COURT: Apparently y'all are the ones who
25 screwed this case up beyond all comprehension, so

1 what do you have to say for yourselves?

2 MR. WLODARCZYK: Well, we believe that we have
3 done exactly what the sentencing judge said, Your
4 Honor. I have some --

5 THE COURT: I want to start with this she
6 believes he's entitled to a property right because
7 some clerk at SCDC did something incorrectly on
8 here --

9 MR. WLODARCZYK: Is that the max-out date or
10 the work-related credits? Which one would you like
11 addressed first, Your Honor?

12 THE COURT: Pick one.

13 MR. WLODARCZYK: Max-out date, Your Honor, the
14 sentencing sheets say that he got 25 years
15 consecutive, 50 years total. There's no doubt about
16 it. Every application in every court, and
17 Mr. Carpenter has done, through the state process,
18 through the federal petition for habeas process, has
19 said, I got 50 years and I shouldn't get 50 years.
20 So there's no doubt, on the face of those sentencing
21 sheets, that he got 50 years.

22 And relying on the Tant case, which counsel had
23 been relying on, it states -- the court states: We
24 fully appreciate the Department's duty to correct
25 mistakes that may occur recording an inmate's

1 sentence and we're cognizant of the fact that in
2 some instances the Department of Corrections will
3 resolve nothing more than a clear clerical error.

4 There's no doubt on those sentencing sheets --
5 anybody can look at them -- that he should have at
6 least been put in 50 years. Okay? There should
7 have been no max-out date that was earlier. In the
8 footnote --

9 THE COURT: But there was. She's saying that
10 entitles him to a property right.

11 MR. WLODARCZYK: Only if it was -- only if the
12 sentencing sheet itself is ambiguous. And that's
13 the Tant case. That's in footnote 3: The inmate
14 who is allegedly aggrieved by an ambiguous sentence
15 can, if he chooses, seek judicial review.

16 Again, there's no ambiguity, 50 years. Now, to
17 the extent that it was altered because of reduction
18 of work-related credits or parole eligibility,
19 things along those lines, Your Honor, what I have
20 here -- this is Mr. Carpenter's grievance history
21 regarding his sentence-related credits. If I may
22 approach, Your Honor?

23 MS. BALLARD: Are you going to make this an
24 exhibit?

25 MR. WLODARCZYK: That's fine.

1 MS. BALLARD: Okay.

2 (Defendant's Exhibit No. 1 marked for
3 identification and admitted into evidence.)

4 MR. WLODARCZYK: And I believe Ms. Ballard's
5 reading the Furtick decision is improper. There's
6 no law in South Carolina that says you can't take
7 away good-time credits; otherwise, you wouldn't have
8 any way to discipline inmates.

9 What Furtick says is that you do have a
10 property interest in your time and time earned, and
11 if you take away that time, you have to have due
12 process rights, which means you go through a review
13 process.

14 I'm sure Your Honor has held inmate hearings
15 where they petition certain things and SCDC gets in
16 here and says, you have a grievance process
17 established, you have a step-one form that you have
18 to file and it says this is what the problem is and
19 gives the Institution an opportunity to do a review,
20 and if you don't like that review, you can file a
21 step-two appeal and that gives a second opportunity
22 for the Institution to review if there's any
23 problems with what happened, and if you don't like
24 that, then you have 30 days to file an appeal to the
25 Administrative Law Court, and then you can have a

1 judicial review of the decision at the department
2 level reviewed. And that complies with due process.

3 There's no allegations in any -- of this matter
4 that if you comply with the grievance procedures set
5 forth and appeal it that your due process rights are
6 violated. And what Your Honor has here, the first
7 four pages are just a computerized sheet, but it's
8 in reverse order.

9 But the first page after the computerization is
10 Mr. Carpenter's step-two grievance which would be --
11 and before that is his step-one where he complains
12 about this very specific issue about his
13 work-related credits being taken away. He did that
14 in 2013.

15 And behind that is the warden's response where
16 he reviewed it and found there was no error because
17 he was serving a 25-year consecutive for a total of
18 50 years, was not eligible to receive any good time
19 or work credits. And he was informed that he did
20 not accept that on December 10th, 2013, and he
21 wished to file a step-two appeal, which he then did.

22 He filed a step-two appeal on December 10th,
23 2013. And, again, the response was, he's serving
24 mandatory sentences and he's not entitled to reduce
25 those sentences by good-time credits or earn work

1 credits, et cetera. Again, Ms. Ballard hasn't
2 challenged the statute itself saying somehow that is
3 incorrect, so all we're doing is applying the
4 statutory intent of the Legislature.

5 Again, he signed off on that in 2014. And it
6 states in there, in this notice, that if he wants to
7 appeal, he has to file a notice of appeal form
8 within 30 days. He was given every opportunity to
9 proceed through the due process rights required
10 under the United States Constitution when his
11 credits were taken back, and he waived them, he did
12 not appeal.

13 Ms. Ballard's brief indicates he got Mr. Osment
14 to represent him in 2015, again, didn't try to
15 appeal this decision or rehear it. This whole issue
16 was barred because he has the rights that are
17 established by the laws of South Carolina employing
18 requirements of due process in the United States
19 Constitution. He should have appealed this 30
20 days -- within 30 days of this final decision where
21 he signed off on it in 2014, and he didn't.

22 Now he's showing up today again trying to
23 rehear this issue as he's trying to rehear other
24 issues regarding this matter. His due process
25 rights arguably may have been violated, in his

1 opinion, but he didn't follow the process that's set
2 up to make sure that he's afforded the rights under
3 the Constitution, which is appealing through the
4 ALC.

5 We raised this to Chief Justice Toal. She
6 interpreted the fact that you don't necessarily have
7 to go through the ALC, that you can bring an action
8 in this Court's jurisdiction, but you're still bound
9 by the same deadlines, you have to timely appeal it.
10 What you are is basically appealing the decision of
11 the agency, and, unfortunately, he has not done
12 that.

13 And again, with regard to the Tant case and
14 making the 50 years consecutive, all it does is
15 apply the clear sentencing set forth on those
16 sentencing sheets and the law of South Carolina with
17 regard to the statutes that he was sentenced under
18 in 1990, 25 years each, day for day, no credits.

19 Regarding the issue about unequal treatment,
20 Exhibit E -- Exhibit D is an e-mail from the
21 Department of Corrections to Mr. Osment when he was
22 representing him in his -- in an attorney capacity.
23 And it explains Mr. Horne got out. He got lucky. I
24 don't see in any situation where he can say someone
25 did not get punished as what they should, and

1 therefore my guy shouldn't be punished the way the
2 Legislature intended either because this guy was
3 lucky enough to get out or another individual died
4 before we caught the mistake or somebody was
5 paroled.

6 I think if the Department had the resources to
7 have gone out and bring people back in or legally do
8 that, maybe they would have. But, unfortunately for
9 Mr. Carpenter, his issue was caught, it was
10 corrected, and he's serving the time that he pled
11 guilty to and was convicted of. I'll be happy to
12 answer any additional questions, but our position is
13 pretty straightforward.

14 THE COURT: All right.

15 MS. BALLARD: May I respond briefly to that,
16 Your Honor?

17 THE COURT: Go ahead.

18 MS. BALLARD: As Your Honor will look at
19 Exhibit D, trial Exhibit D that Mr. -- that Damon
20 referred to --

21 THE COURT: Mr. Wlodarczyk.

22 MS. BALLARD: Mr. Wlodarczyk. Thank you.

23 The memo to Mr. Osment, the last paragraph,
24 interestingly enough, says: The inmate did not
25 receive a hearing prior to his sentence being

1 changed since that was not the process at that time.
2 We have since incorporated a due process hearing for
3 inmates who, through no fault of their own, have a
4 change in their current sentences that affects the
5 projected release to their detriment.

6 That's exactly what happened to Mr. Carpenter.
7 And you know what they're talking about, they're
8 talking about Tant because the Supreme Court told
9 them in Tant that they had to have a hearing before
10 they did it. And this is April 20th, 2015. The
11 Department of Corrections itself admits that they
12 should have given Mr. Carpenter a hearing.

13 With reference to the ALC issues that were
14 argued in front of Justice Toal, that same argument
15 was made that he should have gone through the Al
16 Shabazz internal grievance proceeding and should
17 have gone to the ALC and should have gone to the
18 Court of Appeals and should have gone to the Supreme
19 Court on cert. That same argument was made to
20 Justice Toal.

21 And Justice Toal denied that motion to dismiss
22 and she said that under Butler v. State, when the
23 facts presented to the Court are so shocking to the
24 conscience of the Court as to require a hearing in
25 circuit court, you need not follow that procedure.

1 And she denied their motion to dismiss on the basis
2 of the facts of this case being shocking to the
3 conscience of the Court, citing Butler.

4 So the argument that the Department of
5 Corrections' Exhibit No. 1 has any relevance to the
6 issues that are before this Court is simply not
7 true. Justice Toal has already said that process
8 doesn't apply here.

9 THE COURT: I thought that was a motion to
10 dismiss.

11 MS. BALLARD: It was. And it was a motion to
12 dismiss in part on he should have done this. And
13 she said, no, he doesn't have to do that. He's here
14 under Butler v. State, this Court has jurisdiction.

15 MR. WLODARCZYK: And that was under the habeas
16 argument, Your Honor. Again, I think Ms. Ballard
17 keeps blending these declaratory judgment action
18 habeas petitions together. The habeas petition is
19 against the State in his sentence and whether or not
20 he's being unlawfully held for 25 years. As pled,
21 the declaratory judgment action has to do with
22 work-related credits and change in his max-out date,
23 so it's in the order.

24 I would just note that regardless of whether
25 there was a hearing offered at the time, that is the

1 hearing process; step one, you get notice of change
2 in your sentence, you got the opportunity to file a
3 step-one grievance, a step-two appeal, and if you're
4 not satisfied, appeal through the Administrative Law
5 Court. That complies with due process.

6 Whether they had it in place or not,
7 Mr. Carpenter took advantage of the first two steps.
8 And for whatever reason, he chose not to proceed
9 through the Administrative Law Court even though the
10 step-two appeal, which he signed off on, says if
11 you're not satisfied, you have to file a notice of
12 appeal within 30 days. And that's all that's
13 required to comply with due process under the law of
14 South Carolina.

15 THE COURT: All right.

16 MR. MITCHELL: Judge, may it please the Court.
17 I'm going to kind of jump in where we left off
18 there. I guess we'd like to renew all our previous
19 motions earlier as to the motion to dismiss and, I
20 guess, in the alternative, make a motion for summary
21 judgment now or, you know, at least a ruling on the
22 merits.

23 As we get here, I think we're still
24 procedurally barred from this Court hearing this
25 matter. I think you have to make certain showings,

1 I think, now that everything has been put up, and
2 evaluate that whether these showings have been made,
3 whether it's properly before you today.

4 I think the way these go, it's if -- the PCR
5 statute took the place of all common law risks, that
6 was the purpose of the statute. So in order to file
7 a petition for state habeas, you have to show that
8 the allegations could not be raised in a PCR case.
9 Here -- well, and there's a few cases to support
10 that.

11 In my amended return to the petition for writ
12 for habeas corpus, I spell a lot of this out. But
13 you only get a hearing if they can show that PCR is
14 available, that all remedies have been exhausted,
15 and that the issues raised now could not have been
16 raised in prior PCR applications.

17 So you're procedurally barred if you can bring
18 these in a PCR application. If you're procedurally
19 barred, your only relief is by filing a petition for
20 writ of habeas corpus in the original jurisdiction
21 of the Supreme Court.

22 THE COURT: So your theory is, very
23 respectfully I might add -- I know people don't like
24 to say this to judges, but your theory is I don't
25 even have the jurisdiction to hear this case?

1 MR. MITCHELL: No, it's not that you don't have
2 the jurisdiction to hear it, I just think after
3 putting up the evidence -- this is kind of what
4 Judge Toal had a bit of a hard time going through:
5 She talked about Butler shocking to the universal
6 conscience of justice.

7 THE COURT: Right.

8 MR. MITCHELL: So that's the type of hearing
9 she envisioned. So in order to proceed on state
10 habeas grounds, you have to show. So she said that
11 that's not a motion to dismiss stage, that's the
12 argument for the merits stage.

13 THE COURT: So you're saying that now that all
14 the facts are out there --

15 MR. MITCHELL: That --

16 THE COURT: -- that these are all issues that
17 could have been raised in a PCR --

18 MR. MITCHELL: Right.

19 THE COURT: -- but weren't, and, therefore, the
20 only shot he's got is in the original jurisdiction
21 of the Supreme Court?

22 MR. MITCHELL: That's correct. So, you know, I
23 know we've talked about all the merits. I just want
24 to preserve all these arguments --

25 THE COURT: No, no. I'm not trying to stop

1 you, I'm just trying to make sure I'm following what
2 you're saying.

3 MR. MITCHELL: So -- and that's what we're
4 arguing. Now that we're here, he's had an
5 opportunity to put up the evidence to show that
6 these allegations could not be raised in PCR and
7 that they were not proper for that. And then, you
8 know, the argument could be that it should be
9 granted in the original jurisdiction of the Supreme
10 Court.

11 Your Honor, I'll point you straight to the
12 statute. Jurisdiction is enumerated in
13 17-27-20(a)(2), and then in (a)(5), that's if the
14 sentence has expired. So it's not that, you know,
15 PCR is not proper, it is absolutely proper, it is
16 enumerated as a specific allegation that can be
17 raised and is viable through PCR actions.

18 I'd also note that, you know, he's confined, I
19 believe, in Richland County, so that's why this is
20 brought in Richland County. But this was a
21 Chesterfield case, it was venued in Chesterfield
22 from the state grand jury. And, you know, we talk
23 about that a little bit that PCR would be proper in
24 Chesterfield maybe, but not here.

25 So he also hasn't shown that any of this has

1 been exhausted, none of this has been raised with
2 this specificity at this point, so we think PCR is
3 the proper way. I think Judge Toal, when we were
4 looking at the motion to dismiss, she said that
5 taking everything the plaintiff said as true, it
6 should go forward and then Mr. Carpenter would be
7 able to present the evidence, but this would not
8 fall under the PCR statute and to show why a state
9 habeas proceeding would be proper here.

10 So that's just our arguments on the procedural
11 issue. I think now that we are here and say, you
12 know, all that and that's all denied, then the
13 standard to look at is not whether there's some kind
14 of violation or whether there may have been some
15 jurisdictional issues, whether in the -- I'm citing
16 Butler here verbatim which, in this setting,
17 constitutes a denial of fundamental fairness
18 shocking to the universal sense of justice. That's
19 about the highest standard we can have.

20 You know, this isn't -- this wouldn't be
21 regular a PCR where there's any kind of, you know,
22 allegation that could go forward. But this is a
23 very high standard, highest, you know, I think, our
24 jurisdiction really comprehends.

25 But, you know, what this really comes down to

1 is whether Mr. Carpenter was sentenced on June 4th
2 to both indictments. I mean, you look right at the
3 sentencing sheets. One is dated June 4th, one is
4 dated June 9th, they're both filed that same day. I
5 think the evidence is very clear --

6 THE COURT: One is dated June 4th. And you
7 mean the other one is dated August 9th?

8 MR. MITCHELL: I'm sorry. One is dated June
9 4th and the other is dated August 9th of 1990. I
10 don't know how I mispronounced those dates, they're
11 engrained in my head at this point.

12 But we're talking about the subject matter
13 jurisdiction, that's the argument here. This
14 Campbell case stands for the fact that the trial
15 court did not have subject matter jurisdiction. But
16 Campbell itself says that this is not a rule of
17 subject matter jurisdiction.

18 So I think, as far as that goes, it's --
19 Ms. Ballard, in her brief, makes some reference that
20 this might be dicta and this might not be exactly
21 what was meant by the court. But I'd note that that
22 headnote has been cited by the Supreme Court itself
23 in Tant even, standing for that same proposition
24 that it's not a rule of subject matter jurisdiction,
25 it's a rule of authority of the court to hear the

1 matter.

2 So it's -- I don't want to split hairs, but
3 it's not subject matter jurisdiction. And I think
4 that's what they base this entire claim on, that
5 Judge Cottingham did not have subject matter
6 jurisdiction. The cases they rely on that say that
7 it's not subject matter jurisdiction, just that it's
8 authority of the court to preside over that.

9 THE COURT: I mean, Judge Cottingham clearly
10 had authority to hear a general sessions court
11 sentencing.

12 MR. MITCHELL: Right. And that's what Gentry
13 kind of spells out. That's kind of like the seminal
14 jurisdictional case where, you know, a lot of cases
15 were brought saying, well, my indictment -- you
16 know, there were issues with the indictment or other
17 issues with other things that the Court didn't have
18 subject matter jurisdiction. But the Court always
19 has subject matter jurisdiction if it's a criminal
20 case in a matter of general sessions. So I think
21 we're all on the same page with that.

22 And I'll go through a little bit about the
23 state grand jury jurisdiction and how it's a little
24 bit different. And you probably know more about
25 this than the rest of us here. But as it goes, the

1 chief admin of the Fifth Circuit, wherever the state
2 grand jury is held, has subject matter jurisdictions
3 to try those matters, they preside over the grand
4 jury, they're responsible for the proceedings.

5 Ms. Ballard mentioned this earlier, but I think
6 she might have been a little confused on exactly how
7 it works. So there's the presiding judge of the
8 state grand jury, a case would go through that
9 saying indictments were issued, then the Supreme
10 Court would assign the case to a circuit court judge
11 who would then manage the cases specifically, which
12 I don't -- which I've not seen anything of the
13 presiding judge of the state grand jury, but I don't
14 think that's out of the question.

15 But Judge Cottingham was assigned the case.
16 And we do have an order from the Supreme Court that
17 I attached to my amended return to the petition for
18 writ of habeas corpus by Chief Justice Gregory
19 assigning the matter to Judge Cottingham.

20 Now, there is no -- it doesn't list defendants'
21 names or the name of the investigation, it lists the
22 number 89, maybe just 001. I think it probably was
23 the only grand jury case that year. That may not be
24 the -- but I think this was the second one ever, so
25 this kind of was in its infancy.

1 But in that order, you know, while it may not
2 say, you know, Charles E. Carpenter case, our
3 position is that that's the case assigned to Judge
4 Cottingham, I think Mr. Carpenter's, that along with
5 seven or eight others, or it may be more than that,
6 I'm not totally clear on that. But, you know -- so
7 the case was assigned to Judge Cottingham. So under
8 that, then he can then -- you know, then venue is
9 assigned. So venue was assigned to Chesterfield in
10 that same order.

11 So, you know, he has jurisdiction over all
12 proceedings arising out of the investigations;
13 that's motions, terms of court, pleas, trials in the
14 counties where these cases are venued. And it's a
15 continuing jurisdiction, so it's different than,
16 say, if Your Honor was, you know, scheduled to
17 appear down in Orangeburg and you heard numerous
18 cases in Orangeburg. You may not be vested with
19 jurisdiction over those cases at a later date unless
20 there's some sort of, you know, continuing
21 jurisdiction. But under the state grand jury, there
22 is. I think that order is what that envisions,
23 which, you know, would be a little bit different
24 than a judge just presiding over a weekly term.

25 The most important thing is that a judgment in

1 a criminal case is not final until the sentence is
2 imposed. I think the law on that is pretty clear as
3 to numerous cases on that. It's our position that
4 the sentence was imposed first on June 4th and then
5 on August 9th.

6 And to kind of go back to what we were talking
7 about a bit earlier, there's some language about
8 enhancing and contempt. And I'm kind of going off
9 what you said earlier that you can read these both
10 ways. You can read that he's enhancing the
11 sentence; and he is, he's enhancing the overall
12 sentence. As far as the plea agreement, he pled
13 guilty to one of the counts, 25 years was sentenced
14 one day, he said, and then --

15 THE COURT: Let me ask you a question. I don't
16 want to interrupt you, but was this the statute --
17 so when he sentenced him on 5002 in June of 1990,
18 was the sentencing range that was available to him
19 25 or 25 to 30?

20 MR. MITCHELL: I'm not certain. I believe it
21 was the mandatory 25.

22 THE COURT: Okay. Because a lot of those at
23 that time carried 25 to 30 with no part of the 25
24 may be suspended nor probation granted nor parole.

25 MR. MITCHELL: That, I believe, was part of the

1 statute.

2 THE COURT: Right.

3 MR. MITCHELL: I think it still currently is.

4 MR. WLODARCZYK: Actually, Your Honor, in
5 looking at Exhibit T, it says it's not less than 25,
6 no more than 30.

7 THE COURT: Right. So he could have enhanced
8 the sentence on 5002 by changing it from 25 to 26 to
9 27 to 28 to 29 to 30 years, but he didn't. He
10 didn't change the sentencing sheet from June of 1990
11 in August of 1990.

12 MR. MITCHELL: Right. So, you know, it's 25
13 years. He retained jurisdiction over the matter,
14 which he would have had vested through that order,
15 it's our position, and that, you know, that's
16 routinely done.

17 So even if this wasn't a state grand jury case,
18 I don't see an issue with either -- I mean, the plea
19 judge can retain jurisdiction to hold sentencing. I
20 mean, he can defer sentencing a month to allow
21 probation to do some kind of report or -- I mean, I
22 don't know whether they'll do that a lot in state
23 court, but it happens. I know Judge Barber used to
24 order that a lot.

25 So I don't think there's anything wrong, even

1 if this was not a state grand jury case, with Judge
2 Cottingham retaining jurisdiction and then holding
3 the sentencing in abeyance, pending an opportunity
4 for Mr. Carpenter to fully comply with this plea
5 agreement. And I note that Judge Cottingham even
6 says -- I think this is page 21 of that June 4th
7 hearing -- I will hold the question of sentencing on
8 the second count in abeyance.

9 And it's funny that he says "in abeyance,"
10 because in that Campbell case, which the Supreme
11 Court found was an improper exercise of authority
12 over the case when a defendant pled guilty -- in
13 Campbell, when a defendant pled guilty pending --
14 and was sentenced and was -- and as part of his
15 agreement to plea would testify against a
16 co-defendant, he refused to testify against the
17 co-defendant. The State then filed no motions,
18 filed nothing, and just brought the case back before
19 the trial judge and the trial judge ruled that he
20 had breached the agreement and he increased the
21 sentence.

22 So in that they say that the proper way to do
23 it is to defer sentencing and hold it in abeyance
24 pending result of other matters, which is --

25 THE COURT: And you're saying that's on page

1 what of the transcript?

2 MR. MITCHELL: Page 21. He says exactly: I'm
3 going to hold the question of sentencing on the
4 second count in abeyance, then after a full hearing,
5 if I find that Mr. Carpenter has, in fact, complied
6 with the agreements, his sentence on that count will
7 run concurrent with the sentence first imposed
8 today.

9 So it's at that point, you know, he's signaling
10 if you -- he's really just giving Mr. Carpenter
11 another opportunity to meet with these agents, be
12 debriefed --

13 THE COURT: He's giving him another chance to
14 cooperate. It's clear as day. And, you know, what
15 he did was he sentenced him and he said, listen, now
16 is your chance to go cooperate and make all this
17 right, and he didn't do it. I mean, he doesn't
18 explicitly say that but, I mean, anybody that's ever
19 handled as many state grand jury cases as I have
20 knows that's exactly what happened.

21 MR. MITCHELL: And, you know, that's exactly
22 what happened. They come back August 9th and the
23 State puts up -- they go through the whole thing of
24 saying, we need to have a hearing on whether he's
25 complied at all, we'll present evidence to show that

1 he has not complied. I know Ms. Ballard brought up
2 that rule about shifting the burden.

3 I think Judge Cottingham was showing that
4 there's nothing even presented before him to show
5 that he cooperated at all; not shifting the burden
6 and saying he must present something, it's just that
7 there was no cooperation at all, he's taken no steps
8 in furtherance to comply with the plea agreement.

9 So August 9th they go through and they present
10 witnesses, numerous ones, through the investigators,
11 a few other people he was housed with, and
12 co-defendants who may have testified against him.
13 There are allegations that he threatened to kill
14 these witnesses, there's allegations that he never
15 forfeited any assets that he had promised to
16 forfeit, he was deceptive, according to the
17 polygraphs, that he was -- during his interviews,
18 that he then refused to continue talking at all with
19 the agents. So, I mean, that was the -- whether the
20 State had provided enough information to show that
21 he had not complied with his obligations under the
22 agreement --

23 THE COURT: And doesn't Judge Cottingham say
24 that in the plea hearing? Doesn't he basically say
25 we're going to make an -- I'm going to make an

1 evaluation of whether or not you've complied with
2 the terms and conditions of the plea agreement?

3 MR. MITCHELL: I mean it's -- yes. I don't
4 think it's any secret to anyone. I think that's
5 exactly what the purpose of all three of these
6 hearings were. I mean, there's really kind of three
7 hearings; there's one hearing held in chambers when
8 Mr. Carpenter attempted to fire Mr. Loftin and hire
9 two other lawyers, and they kind of chit-chat back
10 and forth about that too. But that was the purpose
11 of the entire hearing, was to see his compliance
12 with the plea offer. Judge Cottingham made a
13 finding that he had not and then allowed the State
14 to recommend that the sentence on the other count
15 would then be consecutive rather than concurrent.

16 THE COURT: Which was specifically enumerated
17 in the plea agreement that if there's -- if he
18 violates the plea agreement for not complying with
19 the terms and conditions of the cooperation
20 agreement, which would include turning over any
21 documents, books, papers, interviews; it includes
22 taking a polygraph, it includes truthful and full
23 and complete debriefing to law enforcement that the
24 State can and, in fact, will ask for a maximum
25 sentence, right?

1 MR. MITCHELL: Yes, sir. That's exactly it. I
2 told you you knew more about this than I did.

3 THE COURT: What about the fact that Judge
4 Cottingham was a resident judge in the Fourth
5 Circuit?

6 MR. MITCHELL: The fact that he was the
7 resident judge in Chesterfield --

8 THE COURT: Yeah.

9 MR. MITCHELL: -- does that have any bearing on
10 the jurisdiction?

11 THE COURT: Right.

12 MR. MITCHELL: Possibly. I think if he was the
13 chief administrative judge for general sessions,
14 then I think he would be allowed to schedule these
15 matters as he deemed fit, you know, pending approval
16 from Court Administration, at least assuming that's
17 how it was done back then.

18 I mean, it's a lot of, you know, we don't know
19 exactly how the grand jury was run, there's no
20 administrative order that we can find spelling out
21 the specifics of how these cases were handled, but I
22 think that really just goes back to why this is not
23 properly before the Court in that this could have
24 been raised, you know, not just in a prior PCR,
25 this -- these allegations, if these are all true,

1 this was known the day he was sentenced.

2 THE COURT: Yeah. I mean, apparently
3 Mr. Loftin, who, for the record, is -- during his
4 hay-day and probably still is -- one of the most
5 preeminent criminal defense attorneys in the entire
6 state of South Carolina. I mean, his reputation, I
7 mean, you know, surpasses him and -- you know, so
8 he's standing there objecting, you know. I guess
9 for whatever reason, they decided not to appeal it.

10 MR. MITCHELL: Well -- and there was an appeal
11 done, so that was part of it.

12 THE COURT: Oh, I thought there wasn't an
13 appeal.

14 MR. MITCHELL: There was an appeal and then
15 there was a few PCRs and then a federal habeas. So
16 he's been through the process.

17 THE COURT: So he's filed PCRs before --

18 MR. MITCHELL: Yes, Your Honor. And that's --

19 THE COURT: -- and not raised these issues?

20 MR. WATSON: He's not raised these issues to
21 this degree as presented today. He's -- you know,
22 really what we're arguing here is stuff that
23 Mr. Loftin was arguing back to Judge Cottingham back
24 in 1990. This isn't -- you know, this isn't
25 anything that could not have been raised back then.

1 But there was notice of appeal -- let's see --
2 yeah, his convictions were affirmed, according to an
3 order and memorandum of opinion filed July 15th,
4 1994, and then filed a -- two PCRs and then had full
5 federal habeas which was appealed in the Fourth
6 Circuit, filed a 2008 PCR, actually had a hearing on
7 that PCR even though it was likely untimely and
8 successive, and then he actually appealed the 2008
9 PCR which is where we included that appendix of all
10 the filings of pretty much every signal one of these
11 actions. So this is really, I think, his fifth
12 action on these types of matters.

13 Now, he has not raised these exactly, which I
14 think really goes against his points, because in
15 order to file state habeas, you have to show
16 exhaustion through the entire process and exhaustion
17 would include all the way to federal court, all the
18 way through federal habeas, so that's not been done.

19 But let's see. One final point, I think we
20 talked about, you know, whether there were orders
21 granting Judge Cottingham the ability to hear these
22 matters. The law is that you presume regularity
23 with proceedings, and then absent some evidence that
24 something was irregular, would presume regularity.

25 So we would presume -- like you said, everyone

1 showed up for sentencing, everyone is on the same
2 page that he will be sentenced on this other count
3 of the indictment, that that is presumed to be a
4 regular and proper proceeding. There's no evidence
5 presented to the contrary of that that this was --

6 THE COURT: I mean, is Mr. Loftin standing
7 there in the August proceeding going, I don't know
8 what's going on, I don't know why we're here, you
9 don't have --

10 MR. MITCHELL: No. I --

11 THE COURT: -- I mean, I'm not prepared for
12 this or --

13 MR. MITCHELL: I mean, he cross-examined each
14 of these witnesses and then presented a few
15 witnesses of his own that he had subpoenaed to be
16 there.

17 THE COURT: Mr. Loftin called his own witnesses
18 at the August hearing?

19 MR. MITCHELL: He called his own witnesses at
20 the August hearing, really showing that
21 Mr. Carpenter, some of these threats that -- and
22 they weren't -- they were kind of veiled threats;
23 not that, you know, I'm going to kill you if you
24 testify against me, but he maybe said things in
25 passing that, you know, if you keep talking, maybe

1 you won't wake up tomorrow. And then Mr. Loftin --
2 that's what the State presented.

3 Mr. Loftin then presented witnesses to say that
4 Mr. Carpenter jokes around a lot, that these things
5 are not serious, that's not what he meant by these
6 types of things when he said that. So it was --

7 THE COURT: So there's a full-blown hearing
8 wherein Mr. Carpenter calls witnesses in this August
9 1990 hearing?

10 MR. MITCHELL: Yes. He calls Bobby Horne,
11 actually, who we've been talking about who kind of
12 slipped through the cracks. Mr. Horne actually
13 testified at this August hearing in that he had
14 never been threatened by Mr. Carpenter.

15 And then there was some talk about whether a
16 conversation where the word dead was said -- which
17 happened, actually, in the courtroom, I think, in
18 the June proceeding -- and one of the witnesses that
19 testified for the State talked about how
20 Mr. Carpenter said something like you're dead or
21 something. But then Mr. Horne was called to testify
22 to clarify that he was talking about, no, we're
23 dead, kind of meaning that he understood the
24 severity of the sentences and, you know, what was
25 going to happen.

1 So, I mean, everything -- I was kind of
2 thinking about how this, whether -- you know, how
3 this could have been raised, and I really think
4 pretty much all of this would be preserved, pending
5 the direct appeal. I mean, this is stuff that could
6 have been raised then or, if not, could have been
7 raised by the PCR in that appellate counsel was
8 ineffective for failing to bring this type of
9 action.

10 But, you know, it's just that Mr. Loftin, he
11 was -- I think he performed very well and I think he
12 provided very good representation to him. But
13 there's no doubt that everyone was on the same page
14 with what they were there to do and what was
15 happening and exactly how the procedure would go
16 forward.

17 And I think, you know, even taking out the part
18 of it's a state grand jury case with the order
19 granting continued jurisdiction, circuit judges
20 can't retain jurisdiction over matters pending, you
21 know, anything that -- pending this same situation,
22 pending his opportunity to cooperate or further
23 information to be gathered as to, you know,
24 restitution, anything like that.

25 So, you know, the sine die argument only works

1 if you believe that he was sentenced to 25 years on
2 June 4th, which I don't think there's any evidence
3 to support that.

4 THE COURT: On both counts?

5 MR. MITCHELL: On both counts. So it would
6 have had to have been 25 years on both counts. The
7 sentencing sheet, I think, is unambiguous. I don't
8 think we really need to get outside the four corners
9 of that. That's what kind of Tant stands for. If
10 the sentencing sheet is ambiguous, then we can look
11 to other sources of information and go from there.

12 But this is unambiguous. I mean, this is
13 signed the same date that it's filed with the state
14 grand jury and it's Chesterfield County State Grand
15 Jury Clerk of Court. The transcripts correspond
16 directly with the sentence, it's pronounced the
17 same. You wouldn't even need to look at the
18 transcripts, really. But it matches up completely,
19 it's consecutive to the other count.

20 And I'd also note that -- I didn't mention this
21 earlier. I did want to at least mention it for the
22 record. But in exchange for this plea agreement --

23 THE COURT: He had serious charges dismissed.

24 MR. MITCHELL: Right. He charges from all
25 over; he had federal charges in North Carolina, he

1 had kidnapping charges in other parts of the state,
2 he had numerous drug charges throughout the state.
3 So it was -- you know, it seemed like maybe not
4 quite the deal, but there was a lot of work done to
5 have this plea agreement come about, a lot of
6 charges were dismissed. And all that is spelled out
7 in the initial plea of that first court hearing.

8 Judge, I think that's all I have. I just
9 wanted to stress that, you know, I know we've kind
10 of been down to the weeds a little bit in some of
11 this, but I think it all just goes back to the
12 sentencing sheets and whether he was sentenced to --
13 or when the sentence was imposed. And it's our
14 position that one sentence was imposed on June 4th
15 and the other sentence was imposed on June
16 9th [sic].

17 THE COURT: All right.

18 Ms. Ballard?

19 MS. BALLARD: Thank you, Your Honor, very
20 briefly. I would urge you to review Judge Toal's
21 order. Judge Toal's order was not a preliminary
22 order on the motion to dismiss waiting to hear the
23 facts. The facts were before the court. It was a
24 ruling that the circuit court, it was the proper
25 place to raise these issues. And the inmate

1 grievance process and the Al-Shabazz process was not
2 necessary to be followed in this proceeding, it was
3 not limited to pending hearing on the merits, so the
4 suggestion that Your Honor can reverse Judge Toal's
5 ruling on that issue, we would argue, is
6 inappropriate.

7 Secondly, the -- the Supreme Court has never
8 ruled on what type of notice is required for a
9 hearing to determine whether to enhance or change an
10 inmate's sentence. We take the position, in
11 addition to the lack of jurisdiction, August 1990,
12 that it was inappropriate procedure that was
13 followed for handling that hearing was
14 inappropriate.

15 Two last points, Your Honor: The statewide
16 grand jury statute cannot affect the South Carolina
17 Supreme Court's exclusive authority to set terms of
18 court. So regardless of what the order in 1989
19 said -- and that's the 1989 statewide grand jury
20 order -- regardless of what it said, there still had
21 to be an order assigning Judge Cottingham to a
22 specific term of court in August --

23 THE COURT: And in June.

24 MS. BALLARD: And in June. And the one in June
25 is moot at this point because Mr. Carpenter has

1 already served those years. But the -- and I
2 disagree with Mr. Mitchell in that we have to
3 presume everything was done right. I think the case
4 law is clear that any inference has to be in -- in
5 fact, the Tant decision discussed that too. Any
6 inference has to be in favor of --

7 THE COURT: But it's ambiguous.

8 MS. BALLARD: Well, not just that. Any
9 conflict in statutes have to be construed in favor
10 of the inmate.

11 And last, the reference to Gentry, Gentry was,
12 in fact, a case that clarified earlier decisions of
13 the South Carolina Supreme Court that suggested that
14 defects in indictments were jurisdictional. It did,
15 in fact, say that defects in indictments were not
16 jurisdictional, but it reaffirmed that a failure to
17 have an order assigning a term of court still was
18 subject matter jurisdiction over any particular
19 case. So despite the fact that it was a statewide
20 grand jury case, the Constitution still required
21 there to be an order assigning Judge Cottingham to
22 hear that case in August of 1990.

23 The other arguments that we have not raised are
24 in our memorandum. And the last point is, attached
25 to our memorandum, Your Honor, is an order from the

1 South Carolina Supreme Court in this case, Carpenter
2 vs. State, addressing one of the prior habeas corpus
3 petitions that Mr. Carpenter filed. And in that
4 case in 1995, the Supreme Court held that the writ
5 of habeas corpus is appropriate if relief would
6 allow the defendant to be released from confinement.
7 And that's why we've brought this matter in the
8 circuit court as a matter of a petition for writ of
9 habeas corpus.

10 It is not correct that our declaratory judgment
11 action is only as to the Department of Corrections
12 and our habeas corpus is only as to the Attorney
13 General's Office. Our declaratory judgment is as to
14 both and our petition for habeas corpus is as to
15 both. Thank you, Your Honor.

16 THE COURT: All right.

17 Mr. Wlodarczyk?

18 MR. WLODARCZYK: Pleadings speak for
19 themselves, Your Honor, but I'll be happy to answer
20 any questions the Court has.

21 THE COURT: Mr. Mitchell, is there anything
22 else you'd like to say?

23 MR. MITCHELL: No. I think I'll just
24 reiterate that we're hearing the -- well, it's their
25 burden, so they're going to prove these

1 irregularities were under the presumption of
2 regularity in proceedings, absent some kind of
3 showing otherwise. I mean, they're the plaintiff in
4 this case, they bear the burden of proof. I'd point
5 that out.

6 And, you know, I understand that this is a
7 stiff sentence and, you know, it's maybe outside of
8 what would be normally ordered today, so I'm a bit
9 sympathetic to that. But I don't think that should
10 really have any bearing on the arguments of
11 jurisdictional matter.

12 The arguments really, kind of to me, make more
13 sense in support of some type of pardon application
14 maybe should be filed, you know, with the department
15 of triple P or maybe with the governor's office.

16 THE COURT: All right.

17 Ms. Ballard, anything else?

18 MS. BALLARD: The only other thing, Your Honor,
19 is Exhibit D, which is the e-mail from Ms. Willis to
20 Mr. Osment --

21 THE COURT: Right.

22 MS. BALLARD: -- acknowledges that the
23 sentences were changed, acknowledges that the
24 credits were taken away, all of which is very clear
25 cannot be done, and even she admits cannot be done

1 without offering him a hearing and an opportunity to
2 be heard.

3 THE COURT: Okay.

4 Go ahead and tell her something else if you
5 want to.

6 (Plaintiff confers with counsel.)

7 MS. BALLARD: Oh, the only other thing he
8 wanted me to tell you is that there were no pending
9 North Carolina charges. That was misspoken, I
10 believe.

11 THE COURT: Okay. You had already gotten your
12 North Carolina sentence?

13 MR. CARPENTER: No. There was none. There's
14 no warrants that ever been in North Carolina. It's
15 been brought up in court there was --

16 THE COURT: Right.

17 THE Plaintiff: There was no federal warrants
18 whatsoever.

19 THE COURT: Okay.

20 THE Plaintiff: It was fake.

21 THE COURT: Okay.

22 THE Plaintiff: There's one other thing I got
23 to talk to her about.

24 THE COURT: Sure. Go ahead.

25 (Plaintiff confers with counsel.)

1 MS. BALLARD: Again as to Exhibit D, Your
2 Honor, Ms. Willis makes reference to --

3 THE COURT: This is the e-mail between
4 Ms. Willis and Mr. Osment?

5 MS. BALLARD: Yes.

6 THE COURT: Okay.

7 MS. BALLARD: In 2010. It refers to an earlier
8 adjustment of possible jail-time credit, so that's
9 an additional event in which they changed his
10 sentence and/or deprived him of credits that he had
11 already earned.

12 THE COURT: Okay.

13 MR. WLODARCZYK: I believe we brief that as
14 well, Your Honor. That's in that packet.

15 THE COURT: Okay. Anything else?

16 Listen, I don't know you, Mr. Carpenter. I
17 was -- let's see, I may have been in middle school
18 or high school when your case happened. But this is
19 your opportunity in this forum to bring this matter
20 up, so anything else you want to tell Ms. Ballard
21 and Mr. Watson about, do it now. I don't want you
22 to come back later and say, you know, the judge
23 didn't let me make all my arguments.

24 MS. BALLARD: Your Honor, could we allow him to
25 address the Court? You may want to swear him.

1 THE COURT: Sure. Sure.

2 Stand up for me and raise your right hand.

3 CHARLES CARPENTER

4 being first duly sworn, testified as follows:

5 MR. CARPENTER: Yes, sir.

6 MS. BALLARD: And speak slowly for the court
7 reporter.

8 THE COURT: Now listen, I want you to be able
9 to air the arguments that you want to air, so say it
10 calmly so I can follow you. Okay?

11 MR. CARPENTER: Okay. Your Honor, this case on
12 this right here about my jail time -- in other
13 words, the Legislature's intent was I get good time
14 and work credits. That's the reason I wrote to the
15 Mr. -- the warden.. He's the head of the department
16 of corrections. This man here works for him.
17 Anyway, he's a friend of mine. I worked with him in
18 Evans. He's a warden.

19 He got -- I wrote to him and told him. He said
20 what he was going to do was he was going to hire
21 Ms. Janet Gaston to check in on my case to see what
22 was going on. Like they say just took my good time,
23 that's not so. What she says they did, the
24 legislative counsel -- they got orders from the
25 legislative counsel on what my statute is.

1 They said the statute says that I got to do my
2 time day for day. What the Department of
3 Corrections done -- in other words, I'm on the
4 44-53-370. Under the 44-53-420 --

5 THE COURT: Okay.

6 MR. CARPENTER: -- that's --

7 THE COURT: And he's referring to the South
8 Carolina Code of Laws.

9 MR. CARPENTER: Right.

10 THE COURT: I just want to make sure the record
11 is clear.

12 MR. CARPENTER: When I first took the plea, it
13 was on the -- the whole case was about conspiracy --

14 THE COURT: Right.

15 MR. CARPENTER: -- conspiracy, conspiracy. But
16 now somehow, I'm under the 370 which is supposed to
17 be possession of drugs. There's no drugs in my
18 case, none whatsoever.

19 Anyway, they took the statute, the Department
20 of Corrections, order of legislative counsel, got
21 it, and the statute says under the 420 before
22 1988 -- in other words, under the 420, you couldn't
23 get but 12 and a half years nonviolent.

24 THE COURT: Because it was a conspiracy and it
25 was cut in half.

1 MR. CARPENTER: Right, under conspiracy.

2 THE COURT: Right.

3 MR. CARPENTER: And then after '88 you get --
4 what the statute says, the 420, you get the full
5 effect of the law, which the 370 you got 25 years
6 with good time and work credits were the
7 legislature's intent. In other words, the 420, what
8 they took and misread because they don't know about
9 the old laws that come back in '88 and stuff, they
10 took the -- that, what Robert Ward -- what
11 Mr. Robert Ward and Ms. Gaston and the legislative
12 counsel said, that means that I got to do my time
13 day for day.

14 They shouldn't come and just take my time
15 because, well, we're just going to take the good
16 time and all this from him for blah, blah, blah.
17 They said they took my time, good time and work
18 credits, from that statute that says the 420 -- not
19 withstanding the 420 gets the full effect of the law
20 now after '88. That's why my good time and work
21 credits was took from all of us.

22 Right here in this paper, everybody in the
23 department of corrections that's had the same
24 statute I had, the drug statute, there's hundreds of
25 them.

1 MS. BALLARD: He's referring to Exhibit B of
2 our trial exhibits.

3 MR. CARPENTER: I'm on the fourth page.

4 THE COURT: Right. I saw your name.

5 MR. CARPENTER: Okay. I got -- in other words,
6 I'm on the fourth page. And there was, like, five
7 of us that went and got Mr. Willis to do this thing.
8 There's, like, four or five people still in prison.
9 So what they did was, the computer or whatever they
10 did was -- and then they got the law because I've
11 been raising cane for 20 years trying to get my two
12 years' federal time to run concurrent with my state
13 time.

14 I been writing, I been doing, and I can't get
15 nobody -- well, the only help I got is her to do
16 anything for me. Anyway, to get that two years so
17 that I can go ahead, you know. And my max-out date
18 was supposed to be 2012; not 2014, not 2015. It's
19 supposed to be 2012 because you can't run state time
20 concurrent -- it's got to be run concurrent, it
21 can't be run consecutive.

22 In court they told me that if I get -- I got to
23 do 25 years, 50 years all together. They said on my
24 first 25, I got to max it out. But I still get --
25 legislature's intent, I still get work credits and

1 good time until they read the statute wrong about
2 the 420 and 370 for the state law. That is what
3 they say the Department of Corrections is saying.

4 Robert Ward, Ms. Gaston, Willis and all them
5 say that's why they took my good time is because --
6 is because they read the statute wrong, not because
7 they just took it. That's the statute they read
8 wrong. If you take what they're doing, just mark
9 out the 420, they don't say nothing about taking day
10 for day.

11 There's nothing in the department of
12 corrections that says I'm supposed to do my time day
13 for day, no -- you can't show me no papers, nobody
14 can; in other words, that is why -- you understand
15 what I'm trying to say -- why they took my good
16 time. They read the statute wrong. The 420 before
17 '88, like I told you, gets 12 and a half back then,
18 now it gets the full effect of the 370, not day for
19 day. That's what Ms. Willis told me.

20 THE COURT: All right. I got it. You said the
21 same thing about five times now, so I got it.

22 MR. CARPENTER: All right. I just want you to
23 know that -- in other words, I get good credits and
24 work time. It's the legislature's intent. Even in
25 the statute of what I'm sentenced under says if I

1 get -- get a charge wrote against me, it comes off
2 my work credits; in other words -- and everything.
3 That's all I wanted to say. That's how --

4 THE COURT: Okay.

5 MR. CARPENTER: I done done my time and, I
6 mean -- but that's what we're here for is my work
7 credits and my good time and -- but my work credits,
8 it can be brought up by the law at any time, not
9 just to be filed. I can bring it up again next
10 year.

11 THE COURT: Okay.

12 MR. CARPENTER: Thank you, sir.

13 THE COURT: You're welcome.

14 Anything else in response to that,
15 Mr. Mitchell?

16 MR. MITCHELL: Nothing in response from me.
17 Thank you.

18 THE COURT: Mr. Wlodarczyk?

19 MR. WLODARCZYK: Nothing, Your Honor.

20 THE COURT: Okay. I'm going to -- I need to
21 read all this stuff to make sure I understand
22 exactly what's going on, and I'll let y'all know my
23 decision. Thank you very much.

24 Do we need to do a hearing tomorrow or did
25 everybody present everything they wanted to present

1 today?

2 MS. BALLARD: We don't need a hearing tomorrow,
3 Your Honor.

4 THE COURT: Mr. Mitchell?

5 MR. MITCHELL: I think we're fine.

6 THE COURT: Mr. Wlodarczyk?

7 MR. WLODARCZYK: No hearing tomorrow.

8 THE COURT: Okay. Thank you all for
9 accommodating your schedules.

10 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 6th of June, 2017.

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

January 3, 2018

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

From: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Sent: Monday, June 12, 2017 3:13 PM
To: Desa Ballard; Damon Wlodarczyk; Clay Mitchell
Cc: Mara Ballard; Beth Cogan; Beth Cogan; Mara Ballard; Monique Trifos; Beth Cogan; Mara Ballard
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Judge Hood would like to schedule this tomorrow at 10. He is fine with Ms. Ballard's partner coming to chambers and phone conferencing her in. Everyone else, if you could please call me from the clerk's office on the second floor of the Richland County courthouse when everyone is present, I will escort you back to chambers.

Thank you so much, and please let me know if you have any questions.

Alexa

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Monday, June 12, 2017 1:51 PM
To: Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Clay Mitchell <CMitchell@scag.gov>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Monique Trifos <mtrifos@rplfirm.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Beth (our paralegal) called and gave Alexa our schedule, so we are just waiting to hear when.

db

-----Original Message-----

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]
Sent: Monday, June 12, 2017 11:40 AM
To: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Monique Trifos <mtrifos@rplfirm.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

I am available tomorrow until 1:00 p.m., Thursday after 12:00 and Friday anytime.

Thank you,

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

ROA 0848

E-mail: damonw@rplfirm.com
Web: https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv%2Furl%3Fu%3Dhttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dwww.rplfirm.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257C1aef3ce8ecc247cad1cf08d4b1a94120-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-257C0-257C636328787882473563-26sdata-3Dv3irgUx4NfuhvEaRQeNNyNkvsTmVVuKnUC58SekEoQ-253D-26reserved-3D0%26d%3DDwIFAw%26c%3DDYGvVmrQQ6VQOFx3Z93C9uQ%26r%3DDdu0BJmkaThi_2ycueFs0Nko7e_ScPC0ZiawG819XTxs%26m%3DDdqVJFe-R_woZ75weSzQH85-hEVEAYSyEsA11r5kQOW0%26s%3DhSUHwevM0YTojX7y9b4Y5h5LheKwb5uzCgtPolD0BvA%26e&data=02%7C01%7CBeth%40desaballard.com%7C6db44a069ab445bdd1e608d4b1c7127f%7C6b7ceb12d1f2465da7a745b658c1488e%7C0%7C0%7C636328915957293727&sdata=m47CyAjqoVzG4KaWGqgGSseaPmcPS%2BpHnW4juUX0FAI%3D&reserved=0

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-----Original Message-----

From: Hood, Robert E. Law Clerk (Alexa Kluska) [<mailto:rhoodlc@sccourts.org>]
Sent: Monday, June 12, 2017 11:36 AM
To: Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Good morning,

Judge Hood would like to schedule a time this week to discuss this case in chambers. He is available tomorrow, Wednesday morning, Thursday, and Friday morning.

Please let me know what works best for each of you and I will get it scheduled. Thank you,

Alexa

-----Original Message-----

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Tuesday, May 30, 2017 3:30 PM
To: Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

ROA 0848

From: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Sent: Monday, June 12, 2017 11:36 AM
To: Desa Ballard; Clay Mitchell; Damon Wlodarczyk
Cc: Mara Ballard; Beth Cogan; Beth Cogan; Mara Ballard
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Follow Up Flag: Follow up
Flag Status: Completed

Good morning,

Judge Hood would like to schedule a time this week to discuss this case in chambers. He is available tomorrow, Wednesday morning, Thursday, and Friday morning.

Please let me know what works best for each of you and I will get it scheduled. Thank you,

Alexa

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, May 30, 2017 3:30 PM
To: Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Mr. Wlodarczyk's paralegal advises my paralegal that Mr. Wlodarczyk is available Thursday morning. As I understand it, Mr. Mitchell is also available Thursday morning.

db

-----Original Message-----

From: Clay Mitchell [mailto:CMitchell@scag.gov]
Sent: Tuesday, May 30, 2017 3:24 PM
To: Desa Ballard <desab@desaballard.com>; Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Alexa,

My conflicts are both in general sessions. Tomorrow's hearing is scheduled before Judge Verdin. It is scheduled along with a dozen other motions to be heard in the morning. On Friday, Judge Harrington has scheduled motions along with

I believe Damon is on vacation and may not be checking his email, but it's my understanding that SCDC shares our position.

Thank you.

Clay

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Monday, June 26, 2017 2:02 PM
To: Hood, Robert E. Secretary (Jennifer S. Smith)
Cc: Harvey Watson; Damon Wlodarczyk; Clay Mitchell; Beth Cogan; Beth Cogan; Mara Ballard
Subject: FW: Charles Carpenter v. State, Case No. 2016-CP-40-6916

We sent this to Judge Hood and his law clerk around noon. We got a bounce back that the law clerk has gone and the new one won't be in for a while. So I am forwarding this to you too, to assist in directing it to Judge Hood's attention.

Thanks so much.

Desa Ballard

From: Desa Ballard
Sent: Monday, June 26, 2017 12:02 PM
To: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; 'rhood@sccourts.org' <rhood@sccourts.org>
Cc: 'Damon Wlodarczyk' <damonW@rplfirm.com>; Clay Mitchell <CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>
Subject: Charles Carpenter v. State, Case No. 2016-CP-40-6916

Judge Hood:

Following our status conference on June 13, 2017, we reached Mr. Carpenter directly by phone, and he agreed to your proposed resolution of the case in principal. At 4:14 PM that same day, I emailed defense counsel and advised them of Mr. Carpenter's indicated consent. I also advised I would begin preparing documents that would effectuate the resolution you suggested. **Exhibit A.** We heard nothing in response from defense counsel, and assumed they were then waiting on proposed documents we had promised to provide.

On June 16, 2017, my partner met personally with Mr. Carpenter at Evans Correctional Institution, and Mr. Carpenter signed a form release to confirm our

earlier indication that he had agreed in principal and was ready to finalize the matter. We forwarded a copy of the signed release to defense counsel that afternoon, June 16, 2017. **Exhibits B and C.** Again, we heard nothing in response. **ROA 0853**

My mother-in-law died, and I was out of the office traveling and attending to the usual matters in such circumstances for a few days thereafter. Having waited long enough for a response by the end of that period, however, we reached out for a status update this past Friday, June 23, 2017. **Exhibit D.** Both defense counsel responded within minutes and definitively indicated no deal would be made. I have attached their responses. **Exhibit E and F.**

I have carefully studied both responses. Damon says SCDC "is unable to alter or amend Mr. Carpenter's sentence. . ." **Exhibit E.** Clay says the AG "will not be able to consent to Mr. Carpenter's release. . ." **Exhibit F.**

Ready strictly, neither response actually objects to the release or proposed order which incorporate your suggested resolution; the responses carefully say neither will take any affirmative actions. I cannot tell if the responses are carefully worded to prevent a record of either defendant affirmatively consenting to the relief you indicated would result from Mr. Carpenter's execution of a release; or whether the wording is intended to be an affirmative objection from one or both defendants.

For those reasons, we are attaching a proposed order for your consideration (in Word format). This proposed order seems to accomplish what you instructed on June 13, 2017, reaching a very narrow resolution to the matter without requiring any affirmative action by either defendant.

If this proposed order is not in line with your instructions, or Defendants object and want to force a detailed order to be issued as to the depth and breadth of all meritorious claims raised by Plaintiff that were discussed at the motions hearing, Plaintiff requests an opportunity to submit a more detailed proposed order granting the relief requested by Mr. Carpenter in his petition and complaint. That would, of course, not include a release to SCDC or the AG as contemplated with this narrow order, and would require additional time beyond today to draft and submit for your consideration.

We await further direction. If you believe another status conference is in order, I am working from my second home, so I would need approximately a day's notice before I could attend. Even so, I can be there as early as tomorrow because we have sought to expedite this matter from the start and are committed to having this matter resolved as expeditiously as justly possible.

The contents of this e mail will be incorporated into a letter to be filed with the Clerk of Court to preserve the record.

Thank you for your assistance.

Desa Ballard

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

ROA 0854

**Sent:** Friday, June 30, 2017 4:20 PM

**To:** Robert Hood <[rhoody@sccourts.org](mailto:rhoody@sccourts.org)>; Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoody@sccourts.org](mailto:rhoody@sccourts.org)>

**Cc:** [damonW@rplfirm.com](mailto:damonW@rplfirm.com); Clay Mitchell <[CMitchell@scag.gov](mailto:CMitchell@scag.gov)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>

**Subject:** Charles Carpenter v. State and SCDC

Dear Judge Hood:

Last week, not knowing you were on vacation, we sent you a proposed order consistent with the instructions you have given us at the status conference on June 13, 2017. At that time, you proposed that Mr. Carpenter execute a full release in favor of the defendants prior to you issuing a final order granting habeas corpus. As I explained last week, Mr. Carpenter consented, and we did as you instructed and notified defendants' counsel, providing them with a copy of the release signed by Mr. Carpenter. We did not receive any response from defendants' counsel.

Prior to learning you were on vacation, on June 26, 2017, we sent you a generic order granting habeas corpus which contained no findings of fact (so that the order would have no preclusive effect for other inmates) to carry into effect your proposed resolution. After doing so, this past Tuesday, we received an email from Clay Mitchell (counsel for the State) indicating that he does not consent to the resolution that you proposed and speculating that SDCD similarly did not consent to your proposal. (Your assistant advised us you will be returning from vacation on July 3, 2017).

At the June 13, 2017 status conference, you imposed a deadline of June 30, 2017 for the parties to let you know whether they agreed with your proposal. Mr. Carpenter does, and we notified the defendants and provided them with a copy of the release on June 16, 2017. Their silence led us to believe they had accepted your proposal.

In light of Mr. Mitchell's renewed objection, we have prepared an alternate proposed order (attached), which grants habeas corpus to Mr. Carpenter, based on the most narrow issue presented (Judge Cottingham's lack of authority at the second sentencing hearing), to minimize the possibility that the order might be used collaterally by other inmates to try to obtain relief. We understood your clear instructions on June 13, 2017 to propose an order that did not contain any findings of wrongdoing by either defendant, which we did on June 26, 2017.

The attached order is more detailed than the form order attached to the release that Mr. Carpenter has signed in favor of the defendants. However, as long as neither defendant appeals the grant of habeas corpus (which was set forth as the consideration for the execution of the release), the release is likely still effective.

I still believe the proposed order we sent to you on June 26, 2017 is consistent with the instructions you provided at the status conference on June 13, 2017. However, that order is so bare as to likely be subject to attack on appeal (which would invalidate the release anyway) but in light of Mr. Mitchell's continued objection, we are attaching a more substantive order for your consideration.

If you sign either order and one or both defendants appeal, the release signed by Mr. Carpenter would not be valid. I believe that to be inconsistent with your instructions at the pretrial

**ROA 0856**

hearing. However, in order to maintain the expedited nature of this proceeding, both proposed orders give the defendants the option of appealing or not appealing, and therefore the defendants have the option of validating the release from Mr. Carpenter that you requested.

On Monday, July 3, 2017, we will have a copy of this letter and enclosure (second proposed order) delivered to your chambers. Please let us know what else we can do to expedite this proceeding.

With warm regards,

Desa Ballard

**ROA 0856**

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 GRANTING HABEAS CORPUS**

Plaintiff Charles Eugene Carpenter (hereafter "Carpenter") brought this declaratory judgment action and petition for writ of habeas corpus asserting he was being detained after the expiration of his lawful sentence and should be immediately released from the custody of the Defendant South Carolina Department of Corrections (hereafter "SCDC").

Carpenter filed this expedited<sup>1</sup> 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 was properly served with the pleadings on behalf of the State. 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.

An expedited hearing on the merits was held on June 6, 2017, at which time the Court considered Carpenter's motion for judgment on the pleadings and motions for entry of default. The Court took the matter under advisement, and later held a status conference to discuss the

<sup>1</sup> 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.

potential for resolution of the claims between the parties. Upon notice that the parties were not able to resolve the matter privately, the Court hereby issues the following findings of fact and determinations of law:

Motion for Default

As to the motion for entry of default, the Court heard from all parties, beginning with Carpenter, who contends that both defendants failed to file timely Answers following a prior hearing in this matter, after which Acting Circuit Court Judge Toal denied Defendants' motions to dismiss and gave them a deadline by which to file an Answer to the Complaint. Carpenter argued all facts as alleged should be found in accordance with those alleged in Carpenter's complaint, even though Defendants would still be allowed to make any legal arguments they desired because of the operation of Rule 55(e), SCRCP that prevented holding these two defendants in comprehensive default.

Defendant SCDC contended that it timely filed an Answer within fifteen days of entry of the order denying its motion to dismiss, which should be accepted even though not filed within fifteen days of the hearing at which the motion was denied. Defendant State of South Carolina ("the State") argued that by its pleadings filed, even though none were captioned as an "Answer," it had fully responded to and defended against all claims made by Carpenter.

The motion was set aside for consideration while the substantive underlying claims were discussed at the rest of the hearing. After review of the record and arguments from counsel as to the default issue, as well as the remainder of the hearing regarding the underlying substantive claims asserted by Carpenter, I deny Carpenter's motion for default against the Defendants in this matter. The facts are almost entirely undisputed between the parties, and I find that the State and SCDC have adequately responded to the claims made by Carpenter that holding them in any form

of default, to the extent possible notwithstanding Rule 5(e), SCRCP, need not be addressed on the merits because the facts are undisputed and the question of default is therefore purely academic.

Therefore, full consideration of the substantive claims made is appropriate.

#### Merits of Claims presented

Carpenter has asserted three primary bases upon which he claims entitlement to a writ of habeas corpus and release from incarceration: (1) lack of authority on the part of the sentencing judge to have sentenced Carpenter to a consecutive 25 years on indictment number 90GS475001 in August 1990, after sentencing had been completed during a prior term of court; (2) SCDC unilaterally changing Carpenter's sentence duration calculation (including the grant of work and good time credits that were later taken away by SCDC) without due process; and (3) disparate treatment between Carpenter and other inmates receiving sentences on the same indictments, which constitutes an equal protection violation.

#### Background

On April 7, 1990, Carpenter signed a plea agreement with the State, a copy of which was attached to the complaint as Exhibit A. The terms for that agreement were to dispose of the entire case against Carpenter, (both indictments to which Carpenter was pleading, and dismissal of other charges) and 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. The agreement did not permit the sentencing on the two (2) charges in the plea agreement to be bifurcated.
- (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 would recommend that the Court impose a sentence of 25 years on each indictments, and that the sentences be concurrent.
- (e) Carpenter would provide information to the State and cooperate in its investigations.
- (f) If the State's obligations under the plea agreement become "null and void... the State could have argued for a maximum sentence for the offenses to which [Carpenter] pled guilty"
- (g) "The Attorneys for the State agreed 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 Authority**

Judge Edward W. Cottingham was assigned<sup>2</sup> to hold circuit court in Chesterfield County for the week of April 9, 1990. By order of Chief Justice George Gregory dated November 15, 1989, Judge Cottingham was vested with authority to "dispose of all matters... arising from State Grand Jury Investigation No. 89-005." Even if, as appears likely based on numbering of the

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<sup>2</sup> Carpenter does not dispute Judge Cottingham's authority to preside over the term of court at which his plea was accepted on April 9, 1990.

indictment, and as I hereby find, the charges against Carpenter arose from a statewide grand jury investigation<sup>3</sup>, Judge Cottingham did not have jurisdiction in perpetuity over all cases arising from the statewide grand jury. For the reasons set forth below, I find that his authority ended on or about June 4, 1990, when the case was “disposed of” and the term of court was later adjourned *sine die*. For that reason, Carpenter’s sentence was a total of twenty-five years and it has expired, so a writ of habeas corpus declaring his release from custody is appropriate.

April 7, 1990

Carpenter entered his guilty plea on April 7, 1990 before Judge Cottingham. See Exhibit B to the Complaint, a transcript of the hearing held on that date. 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.” (Tr. p. 10, lines 19 – 20). However, 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.” (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.” (Tr. p. 13, lines 5-7). 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.” (Tr. p. 13, lines 14-15).

However, because Judge Cottingham did not impose any sentences on April 7, 1990, he retained jurisdiction to impose sentences at a later date. See *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008).

---

<sup>3</sup> It would have been helpful for the indictments and/or plea agreement to identify the statewide grand jury proceeding from which the proceedings arose, to avoid the uncertainty of the applicability of the order assigning a particular judge to an entire group of cases from a single grand jury case. It is recognized that the statewide grand jury process was in its infancy when Carpenter’s plea was taken. The Chief Justice of the South Carolina Supreme Court now issues administrative orders governing procedural matters in statewide grand jury proceedings.

June 4, 1990

Sentencing proceedings reconvened on June 4, 1990. See Exhibit C to the Complaint. At the time of sentencing, the State advised the Court that Carpenter “has not been conforming to the terms of the agreement.” (Tr. page 9, lines 6-8). The State asked the trial judge to “enforce the terms of the plea agreement by requiring or imposing a consecutive sentence” upon Carpenter. (Tr. p. 11, lines 13-16). Cottingham thereafter considered the State’s position as to non-compliance with the terms of the plea agreement, but elected to proceed with entering a sentence as to indictment number 90GS475002 and impose a 25-year sentence on that indictment only. Judge Cottingham executed the sentencing sheet for Case 90GS475002 on June 4, 1990. No evidence has been produced to indicate that Judge Cottingham signed a sentencing sheet for Case 90GS475001 on June 4, 1990.

By proceeding with sentencing on one of the two indictments that were joined together by the previously accepted plea agreement, Judge Cottingham “disposed of” the entire case against Carpenter, including both indictment numbers. This reached the end of his authority under the order signed by then-Chief Justice Gregory, since 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). State v. DeAngelis, 257 S.C. 44, 183 S.E.2d 906 (1971) (“ambiguity or doubts relative to a sentence should be resolved in favor of the accused.”)

By virtue of a single plea agreement, Judge Cottingham had one opportunity for sentencing on the plea agreement. He did not have authority to exercise jurisdiction over Carpenter’s case indefinitely. See Mims v. State, 273 S.C. 740, 259 S.E.2d 602 (1970) (discussing the “unity” of a sentence on multiple offenses that were subject to the same sentencing proceeding)

The ruling in Campbell, confirming that the trial judge's subject jurisdiction is lost at the end of the term has recently been reaffirmed when it was cited in Tant v. State, 408 S.C. 334, 769 S.E.2d 398 (2014). Defendants in this matter have argued that *Tant* requires an ambiguity in the sentencing sheets before transcripts or other materials can be considered to determine the proper sentence imposed. Defendant's misapply *Tant*, which does not preclude the findings made as part of this order.

First, the sentencing sheet for 90GS475001 bears an execution date of August 9, 1990. That alone presents an ambiguity and irregularity because the companion charge disposed of jointly via plea agreement accepted by the court bears an earlier, June 4, 1990 date. See State v. King, 158 S.C. 251, 155 S.E.2d 409 (1930); Carter v. State of South Carolina, 301 S.C. 392 S.E. 2d 184 (1990) (factual ambiguities must be construed in favor of the criminal defendant). See also State v. DeAngelis, *supra*.

Secondly, the *Tant* opinion states in its summary at the beginning of the opinion, "Furthermore, the Department is generally confined to the face of the sentencing sheets in determining the length of a sentence, but may refer to the sentencing transcript if there is an ambiguity in the sentencing sheets." *Id.* (emphasis added). Later in the opinion, the Supreme Court states "We... hold the Department is confined to the face of the sentencing sheets absent ambiguity." *Id.* at 402.

Thus, *Tant* only operations to tie the hands of SCDC, which cannot make changes absent a threshold ambiguity that allows for consideration of transcripts and other materials related to sentencing (and then any changes require proper notice and a hearing, which it is noted was not done for Carpenter). The *Tant* opinion does not limit this Court from considering proper sentencing in the entire context and circumstances, with all information available, and then making

a ruling after a properly raised claim, or indicate Defendant's preferred "four corners" limitation precludes such an inquiry.

Further, in footnote 3 of the majority opinion in *Tant*, the majority states says "The 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.'" The necessary determination is to be made by a judicial officer, and this Court is a suitable such authority, not restrained necessarily to the sentencing sheet itself like SCDC when that mere administrative arm of the State acts on its own.

For the reasons set forth above, this Court concludes that Carpenter's sentences have to be construed as a total 25 year sentence, which has been fully served and Carpenter should be discharged from custody of the Department of Corrections.

IT IS ORDERED THAT the South Carolina Department of Corrections shall mark Carpenter's sentences on 90GS475001 and 90GS475002 as served in full and discharged in all respects. It is further ordered that Carpenter should be released as soon as practicable, with SCDC completing any and all necessary discharge process/paperwork for Carpenter on an expedited basis, but in any event no later than forty-eight (48) hours after service of this order upon counsel for defendants.

In light of the Court's ruling on this issue, it is not necessary to address the other grounds raised by Carpenter in support of relief he seeks. State v. Alexander, 303 S.C. 408, 401 S.E.2d 167 (1989).

The petition for writ of habeas corpus is GRANTED and judgment is declared granted as set forth herein.

IT IS SO ORDERED.

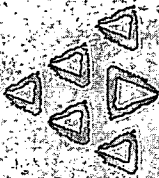
ROA 0865

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ROBERT E. HOOD  
Circuit Court Judge, Fifth Judicial Circuit

July \_\_\_\_, 2017  
Columbia, SC

ROA 0865



**Ballard & Watson**  
Attorneys at Law  
PERSISTENT UNWAVERING

Desa Ballard  
ROA 0866 M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](mailto:desaballard.com)

June 28, 2017

*Via U.S. Mail*

Honorable Jeanette McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

Re: *Charles Eugene Carpenter v. South Carolina Department of Corrections*  
Case No. 2016-CP-40-6916

Dear Ms. McBride:

Enclosed for filing, please find an original and one copy of recent correspondence and a proposed order provided to Judge Hood earlier this week. We have been in contact with his assistant and are aware that Judge Hood is currently on vacation. However, we are submitting the enclosed documents and requesting that they be filed of record in the above-referenced matter. Also enclosed is a check for \$25.00 for the fee that may be applicable because there was a proposed order provided for Judge Hood's consideration.

Please have your office file this correspondence and its attachments before returning a clocked-in copy via our self-addressed stamped envelope that is provided. If you have any questions or concerns, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

*Desa Ballard*

Desa Ballard  
[desab@desaballard.com](mailto:desab@desaballard.com)

Enclosure

*Via U.S. Mail*

The Honorable Robert Hood  
Damon Wlodarczyk, Esquire  
Clay Mitchell, Esquire  
Charles Collini, Esquire (via email)  
Charles Carpenter (via U.S. mail)

ROA.0866

RICHLAND COUNTY  
FILED  
2017 JUL - PM 4:30  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Returned ck to atty Fee cannot be taken without a signed order which we don't have. Cover letter clocked & documents placed in file.

**From:** Hood, Robert E.  
**To:** Desa Ballard; Clay Mitchell; damonW@rplfirm.com  
**Cc:** Hood, Robert E. Secretary (Jennifer S. Smith); Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard  
**Subject:** RE: Carpenter v. State  
**Date:** Wednesday, July 12, 2017 1:07:07 PM

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ROA 0867

SCDC and the Attorney General's office are hereby requested to send proposed orders to me for consideration. Please ensure that Ms. Ballard is copied on the proposed orders. Mr. Mitchell and Mr. Wlodarczyk, please let me know how long you need to prepare proposed orders.

No status conference is necessary at this time.

Thank you, REH

---

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Wednesday, July 12, 2017 9:07 AM  
**To:** Clay Mitchell <CMitchell@scag.gov>; damonW@rplfirm.com  
**Cc:** Hood, Robert E. <rhoodj@sccourts.org>; Hood, Robert E. Secretary (Jennifer S. Smith) <rhoodsc@sccourts.org>; Harvey Watson <harvey@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
**Subject:** RE: Carpenter v. State

We received a message from Judge Hood's office to request a status conference. I had already sent the email below, so I believe I have done as requested.

In case I was not clear, I would like a status conference.

Desa Ballard

---

**From:** Clay Mitchell [mailto:CMitchell@scag.gov]  
**Sent:** Wednesday, July 12, 2017 8:58 AM  
**To:** Desa Ballard <desab@desaballard.com>; damonW@rplfirm.com  
**Cc:** Robert Hood <rhoodj@sccourts.org>; Hood, Robert E. Secretary (Jennifer S. Smith) <rhoodsc@sccourts.org>; Harvey Watson <harvey@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
**Subject:** RE: Carpenter v. State

We will defer to Judge Hood.

Clay

---

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Tuesday, July 11, 2017 1:29 PM

ROA 0867



**To:** [damonW@rplfirm.com](mailto:damonW@rplfirm.com); Clay Mitchell

**Cc:** Robert Hood; Hood, Robert E. Secretary (Jennifer S. Smith); Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard

**Subject:** Carpenter v. State

**ROA 0868**

I was at the courthouse today on another matter and I went to Judge Hood's courtroom, hoping to pick up the order to file with the clerk's office. As he adjourned, I asked to approach the bench (hoping to pick up the order to which no one has objected) but the judge denied my request to approach.

Perhaps he was concerned about ex parte communications. For that reason, I am asking another status conference so we can attempt to resolve this matter. We are now almost one month post the June 13, 2017 status conference at which the proposal was made for a release, and the release signed by Mr. Carpenter was delivered to defense counsel on June 16, 2017.

Do defendants agree to a status conference?

Desa Ballard

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ROA 0868

From: Desa Ballard
To: "Damon Wlodarczyk"; Hood, Robert E.; Hood, Robert E. Secretary (Jennifer S. Smith); Hood, Robert E. Law Clerk (Alexa Kluska)
Cc: Clay Mitchell; Harvey Watson; Beth Cogan; Mara Ballard; Monique Trifos; Beth Cogan; Mara Ballard
Subject: RE: Carpenter v. State
Date: Friday, July 21, 2017 2:39:00 PM
Attachments: [Order Granting Habeas Corpus \(merits\).pdf](#)
[General Release \(full\) executed.pdf](#)

ROA 0869

Judge Hood:

My partner Harvey Watson and I are both out next week (him on vacation, me on other client matters). I'm not sure if you wanted a response from us as to the content of the proposed orders from SCDC and AG, but if you did please accept this e mail as our objection to the proposed orders from both defendants (only one of which we have received so far). We do not want any more delays if possible.

If you need a response before then, please incorporate all of our prior arguments, including our client's agreement to the proposal made by you (release of our client from custody in exchange for full release of defendants and no future suit against them) and our client's execution of a release in favor of the defendants. A copy is attached and was provided to defense counsel on June 16, 2017.

We have sent two (2) proposed orders for rulings in Mr. Carpenter's, both of which were submitted after the proposal in the pretrial hearing of June 13, 2017. The most recent proposed order (on the merits) is attached for your consideration.

Should you deny the relief we are requesting, we will ask for an expedited consideration of our Rule 59(e) motion so that our appeal can be filed immediately.

Thank you.

db

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]
Sent: Friday, July 21, 2017 11:43 AM
To: Hood, Robert E. <rhoojd@sccourts.org>; Hood, Robert E. Secretary (Jennifer S. Smith) <rhoodsc@sccourts.org>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>
Cc: Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>; Harvey Watson <harvey@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Monique Trifos <mtrifos@rplfirm.com>
Subject: RE: Carpenter v. State

Dear Judge Hood:

Please find attached a proposed Order as to the claims against SCDC. Please let me know if anything

ROA 0869

else is needed on behalf of SCDC.

ROA 0870

Respectfully submitted,

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
Web: www.rplfirm.com

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From: Hood, Robert E. [<mailto:rhoodj@sccourts.org>]

Sent: Thursday, July 13, 2017 10:07 AM

To: Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>; Desa Ballard <desab@desaballard.com>

Cc: Hood, Robert E. Secretary (Jennifer S. Smith) <rhoodsc@sccourts.org>; Harvey Watson <harvey@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>

Subject: RE: Carpenter v. State

Proposed Orders from the State/SCDC are due by July 24, 2017. If you guys want to submit one that is fine with me. REH

From: Clay Mitchell [<mailto:CMitchell@scag.gov>]

Sent: Thursday, July 13, 2017 8:44 AM

To: Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. <rhoodj@sccourts.org>; Desa Ballard <desab@desaballard.com>

Cc: Hood, Robert E. Secretary (Jennifer S. Smith) <rhoodsc@sccourts.org>; Harvey Watson <harvey@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>

Subject: RE: Carpenter v. State

Judge Hood,

ROA 0870

I'd ask to have until next Friday, the 21st. I have a trial going forward next week and won't have much time to work on it. Thank you.

Clay

From: Damon Wlodarczyk [<mailto:damonW@rplfirm.com>]
Sent: Wednesday, July 12, 2017 1:30 PM
To: Hood, Robert E.; Desa Ballard; Clay Mitchell
Cc: Hood, Robert E. Secretary (Jennifer S. Smith); Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: RE: Carpenter v. State

I would appreciate having until next Wednesday to prepare a proposed Order for SCDC.

Thank you,

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
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the June 13, 2017 status conference at which the proposal was made for a release, and the release
signed by Mr. Carpenter was delivered to defense counsel on June 16, 2017. **ROA 0873**

Do defendants agree to a status conference?

Desa Ballard

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disseminate this message or any attachment. If you have received this message in error, please  
contact the sender immediately and delete all copies of the message and any attachments.

**ROA 0873**

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

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

(Our File No.: 5021.01216)

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

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), SCRPC.

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 ...")<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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.**

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<sup>3</sup> 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.

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ROBERT E. HOOD

Circuit Court Judge, Fifth Judicial Circuit

July \_\_, 2017



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Charles Eugene Carpenter, #181783,

2016-CP-40-06916

Petitioner,

v.

**ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS**

State of South Carolina,  
South Carolina Department of Corrections,

Respondent.

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.<sup>1</sup> 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

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<sup>1</sup> 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, SCRCR, and/or a Motion to Alter or Amend Judgment Under Rule 59(e), SCRCR." 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, 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 Act<sup>2</sup>, 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

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<sup>2</sup> 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)<sup>3</sup>. 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.<sup>4</sup> 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

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<sup>3</sup> 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)).

<sup>4</sup> 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), SCRCRCP. 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.<sup>5</sup>

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,

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<sup>5</sup> 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 \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
ROBERT E. HOOD  
Presiding Judge

\_\_\_\_\_, South Carolina

**From:** [Desa Ballard](#)  
**To:** [rhoodj@sccourts.org](mailto:rhoodj@sccourts.org); [Hood, Robert E. Law Clerk \(Alexa Kluska\)](#); [Hood, Robert E. Secretary \(Jennifer S. Smith\)](#)  
**Cc:** [CMitchell@scag.gov](mailto:CMitchell@scag.gov); [Damon Wlodarczyk](#); [Harvey Watson](#); [Beth Cogan](#); [Mara Ballard](#)  
**Subject:** Charles Carpenter v. State, Case No. 2016-CP-40-6916  
**Date:** Monday, August 28, 2017 4:14:46 PM  
**Attachments:** [Proposed Order of Dismissal \(01403874xD2C78\).DOCX](#)  
[Carpenter Order.proposed.doc](#)  
[Ltr to Judge Hood encl proposed order 6.30.17.docx](#)  
[Order Granting Habeas Corpus \(merits\).pdf](#)

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ROA 0898

Dear Judge Hood:

On behalf of Charles Carpenter, I am inquiring as to the status of receiving an order in this case. We sent you proposed orders on several occasions, and both defendants have sent you proposed orders. Our most recent proposed orders and the proposed orders from defendants are attached for your review.

Please advise.

Thank you.

Desa Ballard

ROA 0898

Plain text ROA 0899

Exhibits

2016-CP-40-6716

ROA 0899



**EXHIBITS INDEX**

ROA 0900

|    |                                                 | DATE       |
|----|-------------------------------------------------|------------|
| A. | Gonzales letter to Supreme Court                | 2-1-2010   |
| B. | Gonzales review                                 | 2011       |
| C. | SCDC letter to Carpenter re: change in sentence | 12-21-2012 |
| D. | SCDC email to Ozmint re: change in sentence     | 4-20-2015  |
| E. | SCDC email to Ozmint with documents             | 8-7-2015   |
| F. | Bobby Gene Horne documents                      | various    |
| G. |                                                 |            |
| H. |                                                 |            |
| I. |                                                 |            |
| J. |                                                 |            |
| K. |                                                 |            |
| L. |                                                 |            |
| M. |                                                 |            |
| N. |                                                 |            |
| O. |                                                 |            |
| P. |                                                 |            |
| Q. |                                                 |            |
| R. |                                                 |            |
| S. |                                                 |            |
| T. |                                                 |            |
| U. |                                                 |            |
| V. |                                                 |            |

ROA 0900



RECEIVED

FEB 05 2010

DIRECTOR

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

February 3, 2010

RECEIVED

FEB 10 2010

DIVISION OF CLASSIFICATION  
& INMATE RECORDS

Jonathan Edward Ozmint, Esquire  
S.C. Dept. of Corrections  
P.O. Box 21787  
Columbia, SC 29221

Re: Carlos Gonzales

Dear Mr. Ozmint:

Enclosed is correspondence received from Mr. Gonzales. Since he is asking questions about how the Department of Corrections has computed his maxout date, we are forwarding his letter to your office for any assistance you may be able to give him.

Very truly yours,

CLERK

/bs

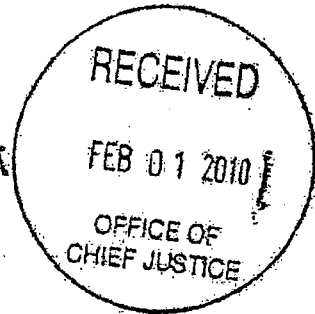
Enclosure

CC: Mr. Carlos Gonzales #217075

ROA 0901

Hon. JOAN TOAL  
 P.O. BOX 13530  
 COLUMBIA S.C. 29536

RECEIVED  
 FEB 01 2010  
 S.C. SUPREME COURT



I have been incarcerated in S.C.D.C. for 16 years (since 1994). My original sentence was 30 years in Sumter and 25 years in Horry County this sentences was running concurrent, by the S.C.D.C.

After being incarcerated for 16 years, I was to max-out my sentence on February 1st 2010; twenty five days (25) before my max-out, S.C.D.C. informed me that my sentence had been changed to 25 years Mandatory. Why was there such a wait (?). How come I was not informed before my max-out time ?.

I haven't been informed by any classification worker or anyone associated with S.C.D.C. that changes had occurred to my record. S.C.D.C. has no authority to change what a Judge rendered without his consent. The Department of Corrections has not authority or Jurisdiction to change the ruled of the Judge.

My main concern is why did they wait until I was ready to max-out before before notifying me of this changes. This is a highly unconstitutional.

I ask diligently for your help and assistance regarding this matter.

I beg you to help me with this huge dilemma: (1) Why did S.C.D.C. conceal or hide for 15 years and 8 month this information ?; (2) Why did S.C.D.C. wait 25 days before my max-out to change my sentence ?; (3) Why didn't S.C.D.C. supply to Court's the proper information at the hearing's ?.

Is my understanding that this is a "cruel and unusual punishment" that Violate Due- Process by the Constitution of United State, because if I was informed in 1995 , could have challenged this problem on the Court that it's pertaining to .

I would like for you to be my advisor, and pray for your expert knowledge in this matter.

Respectfully your

Carlos Gonzalez 217075

*Carlos Gonzalez*

ROA 0903

RECEIVED

FEB 01 2010

S.C. SUPREME COURT

DATE 1-21-2010

PLEASE FIND ENCLOSED ATTACHED COPIES

OF S.C.D.C. OFFENDER MANAGEMENT

SYSTEM "RELEASE DATE SCREEN"

CARLOS GONZALEZ #217075

Carlos Gonzalez 217075

RIDGELAND CORR. INST.

P.O. BOX 2039 S.A. 65

RIDGELAND S.C. 29936

ROA 0903

LISTING OF INMATES WITH A DRUG TRAFFICKING OFFENSE PRIOR TO 1/1/98  
WITH AN INCARCERATIVE SENTENCE OF 25 YEARS OR MORE  
FOR POPULATION ON 3/18/10

2

| SCDC #  | NAME                                 | INSTITUTION    | MAXOUT   | NEXT<br>PAROLE | INITIAL<br>PAROLE | OFFENSE<br>DATE | SENT STRT<br>DATE | OFFENSE                    |
|---------|--------------------------------------|----------------|----------|----------------|-------------------|-----------------|-------------------|----------------------------|
| 88488   | AKBAR, BASIL WALI                    | LEE            |          | 05/20/11       | 01/28/94          | 08/21/88        | 06/21/85          | TRAFFICKING IN COCAINE     |
| ✓126120 | BECKHAM, HERVEY <i>DeWitt</i>        | LANCASTER CO   | 08/30/10 |                |                   | 12/31/85        | 11/30/86          | TRAFFICKING IN MARIJUANA   |
| 131128  | DENNIS, LARRY DONELL <i>10/20/87</i> | WATKINS        | 04/10/10 |                |                   | 07/10/85        | 07/10/85          | TRAFFICKING IN ILL DRUGS   |
| 138725  | JACKSON, ROBERT <i>11/1</i>          | TURBEVILLE     | 10/16/10 | 07/08/10       | 07/20/09          | 07/15/86        | 01/23/87          | TRAFFICKING IN COCAINE     |
| 141871  | LEE, GLENN RUSSELL <i>11/7</i>       | LEE            | 08/03/39 | 08/25/85       |                   |                 | 06/14/87          | TRAFFICKING IN COCAINE     |
| 164889  | GOOD, DANNY WILLIAM <i>11/11/90</i>  | BROAD RIVER    | 05/19/10 | 01/26/10       | 01/26/10          | 03/23/89        | 02/05/80          | TRAF COCAINE (10-280, 1ST) |
| ✓168324 | THRIFT, GEORGE RICHARD <i>11/1</i>   | BROAD RIVER    | 04/21/10 |                |                   |                 | 10/25/84          | TRAFFICKING IN COCAINE     |
| 172728  | STOKES, JOHNNY <i>11/19</i>          | ALLENDALE      | 01/08/19 | 01/11/18       | 01/11/19          | 04/27/90        | 04/30/90          | TRAFFICKING IN COCAINE     |
| 178548  | MCDANIEL, JAMES MARK <i>11/1</i>     | MCCORMICK      |          | 01/26/11       | 01/26/11          | 01/28/91        | 01/26/91          | TRAFFICKING IN COCAINE     |
| 180828  | BENNETT, THOMASON                    | RIDGELAND      | 02/24/11 | 08/19/10       | 07/20/09          | 08/19/81        | 08/19/81          | TRAFFICKING IN COCAINE     |
| ✓181783 | CARPENTER, CHARLES EUGENE            | EVANS          | 05/20/18 |                |                   | 04/07/80        | 04/07/80          | TRAFFICKING IN COCAINE     |
| ✓181968 | MCDOWELL, GEORGE                     | ALLENDALE      | 09/05/11 | 08/28/11       | 08/03/05          | 05/12/85        | 03/25/86          | TRAFFICKING IN CRACK COCA  |
| ✓184752 | HALL, EDWARD LEE                     | WATEREE RIVER  | 12/21/13 | 02/24/11       | 09/17/00          | 03/28/81        | 03/28/81          | TRAFFICKING IN CRACK COCA  |
| ✓187894 | GAUSE, REN ABEL                      | MARLBORO CO DP | 09/16/11 | 07/18/11       | 04/08/01          | 05/31/84        | 03/18/85          | TRAFFICKING IN CRACK COCA  |
| ✓193418 | GALMAN, RONNIE LEE                   | KERSHAW        | 12/22/17 |                |                   | 04/28/85        | 05/28/88          | TRAFFICKING IN CRACK COCA  |
| ✓208563 | HARRIS, STEFEN E.                    | WATEREE RIVER  | 08/01/12 |                |                   | 11/01/85        | 11/01/85          | TRAFFICKING IN CRACK COCA  |
| 212884  | URIBE, MARISOL                       | GRAHAM R&E     | 12/18/13 |                |                   | 12/31/83        | 08/20/84          | TRAFFICKING IN MARIJUANA   |
| 213045  | PRIDLEAU, MARIO                      | RIDGELAND      | 05/30/11 | 01/07/11       | 10/22/00          | 10/21/93        | 10/21/83          | TRAFFICKING IN COCAINE     |
| ✓217097 | DOVE, BOBBY JAMES                    | TURBEVILLE     | 01/02/11 |                |                   | 12/31/93        | 11/04/84          | TRAFFICKING IN MARIJUANA   |
| ✓217075 | GONZALES, CARLOS                     | RIDGELAND      | 01/18/20 |                |                   | 04/28/89        | 09/18/84          | TRAFFICKING IN COCAINE     |
| 228711  | FRANKLIN, WILLIAM J.                 | MANNING        | 11/02/10 | 11/02/10       | 11/02/10          | 05/30/85        | 05/30/85          | TRAFFICKING IN COCAINE     |
| 238910  | ROEBUCK, MELVIN                      | MACDUGALL CORR | 08/21/10 | 08/21/10       | 08/21/10          | 09/13/85        | 05/21/86          | TRAFFICKING IN MARIJUANA   |
| ✓243889 | ADAMS, ALFRED                        | KIRKLAND       | 12/24/34 |                |                   | 10/26/84        | 08/13/87          | TRAFFICKING IN CRACK COCA  |

TOTAL: 23

ROA 0905

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00065498

NAME: AKBAR, BASIL WALI

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 09/07/48

LOCATION: LEE

STATUS: INCARCERATED

ADMISSION DATE: 09/09/71

RELEASE DATE:

TOTAL SENTENCE: 999 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

01/25/94

09/04/15

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* MURDER BEFORE 1977, JUNE

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                  | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|--------------------------|-----------------|------------------------|----------------------------|
| MURDER BEFORE 1977, JUNE | 02/16/71        | 02/17/71               | 999 99 999                 |
| TRAFFICKING IN MARIJUANA | 06/21/85        | 06/21/85               | 10 0 0                     |
| TRAFFICKING IN COCAINE   | 06/21/85        | 06/21/85               | 25 0 0                     |
| TRAFFICKING IN COCAINE   | 01/23/85        | 01/23/85               | 15 0 0                     |
| TRAFFICKING IN COCAINE   | 01/23/85        | 01/23/85               | 15 0 0                     |
| MARIJUANA POSSESS        | 01/23/85        | 05/03/85               | 5 0 0                      |
| ESCAPE                   | 04/01/76        | 04/01/76               | 0 0 0                      |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0905

ROA 0906

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00126120

NAME: BECKHAM, HERVEY

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 04/12/47

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 03/11/97

RELEASE DATE: 03/31/10

TOTAL SENTENCE: 30 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE 08/30/10 INITIAL PAROLE DATE NEXT PAROLE HEARING DATE

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN MARIJUANA

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                  | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|--------------------------|-----------------|------------------------|----------------------------|
| COCAINE DISTRIBUTION     | 04/18/84        | 10/23/84               | 30 0 0                     |
| TRAFFICKING IN MARIJUANA | 12/31/95        | 11/30/96               | 25 0 0                     |
| CRIMINAL CONSPIRACY      | 04/18/84        | 10/23/84               | 5 0 0                      |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0906

ROA 0907

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00131128

NAME: DENNIS, LARRY DONELL

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 04/18/52

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 10/16/01

RELEASE DATE: 03/31/12

TOTAL SENTENCE: 25 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

04/10/10

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN ILL DRUGS

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                  | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|--------------------------|-----------------|------------------------|----------------------------|
| TRAFFICKING IN ILL DRUGS | 06/09/00        | 10/12/01               | 10 0 0                     |
| TRAFFICKING IN ILL DRUGS | 07/10/85        | 07/10/85               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0907



ROA 0908

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00138725

NAME: JACKSON, ROBERT

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 07/17/41

LOCATION: FLORENCE CO

STATUS: PAROLE

ADMISSION DATE: 10/20/08

RELEASE DATE: 07/01/10

TOTAL SENTENCE: 4 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES

MAXOUT DATE  
10/16/10

INITIAL PAROLE DATE  
07/20/09

NEXT PAROLE HEARING DATE  
06/16/11

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* HEROIN POSS INT/DISTR

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|------------------------|-----------------|------------------------|----------------------------|
| HEROIN POSS INT/DISTR  | 12/25/07        | 10/16/08               | 4 0 0                      |
| TRAFFICKING IN COCAINE | 07/15/86        | 01/23/87               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0908

ROA 0909

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00141971

NAME: LEE, GLENN RUSSELL

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 04/23/49

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 11/03/09

RELEASE DATE: 11/28/12

TOTAL SENTENCE: 0 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE 08/10/09  
INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE  
08/25/95

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE:

CONVICTIONS IN CURRENT COMMITMENT:

| OFFENSE                    | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|----------------------------|-----------------|------------------------|----------------------------|
| CRIM SEX COND W/MINOR (1ST | 11/12/07        | 08/10/09               | 30 0 0                     |
| LEWD ACT/CHILD UNDER 16    | 11/12/07        | 08/10/09               | 15 0 0                     |
| TRAFFICKING IN COCAINE     | 09/15/87        | 06/14/87               | 25 0 0                     |
| CHILD NEGLECT              | 11/12/07        | 08/10/09               | 10 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0909

ROA 0910

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00164599

NAME: GOOD, DANNY WILLIAM

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 11/24/59

LOCATION: UNION CO

STATUS: PROBATION

ADMISSION DATE: 07/22/13

RELEASE DATE: 11/01/13

TOTAL SENTENCE: 0 YRS 6 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE INITIAL PAROLE DATE  
11/02/13

NEXT PAROLE HEARING DATE  
09/17/05

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* PETIT LARCENY

CONVICTIONS(S) IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| GRAND LARCENY             | 01/15/09        | 11/06/09               | 1 0 0                      |
| PETIT LARCENY             | 06/28/08        | 07/18/13               | 0 6 0                      |
| FRAUD INSUFF FUNDS CHECK  | 10/16/02        | 10/30/02               | 0 0 420                    |
| OBTAIN GOODS FALSE PRETEN | 01/15/09        | 11/06/09               | 0 0 30                     |
| RECEIVE STOLEN PROPERTY   | 01/15/09        | 11/06/09               | 0 0 30                     |
| COCAINE DISTRIBUTION      | 03/23/89        | 02/05/90               | 25 0 0                     |
| TRAF COCAINE(10-28G,1ST)  | 03/23/89        | 02/05/90               | 25 0 0                     |
| MARIJUANA POSSESS         | 03/23/89        | 02/05/90               | 1 0 0                      |
| MARIJUANA PRODUCING       | 03/23/89        | 02/05/90               | 10 0 0                     |
| DRIVING UNDER SUSPENSION  | 10/16/02        | 10/30/02               | 0 0 90                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0910

ROA 0911

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00166324

NAME: THRIFT, GEORGE RICHARD

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 07/16/49

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 10/21/04

RELEASE DATE: 03/31/12

TOTAL SENTENCE: 7 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE INITIAL PAROLE DATE NEXT PAROLE HEARING DATE  
04/21/10

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN CRACK COCA

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| POSSESS STOLEN VEHICLE    | 06/15/02        | 05/11/04               | 7 0 0                      |
| POSSESS STOLEN VEHICLE    | 06/15/02        | 05/11/04               | 7 0 0                      |
| VIOL VEN CHOP SHOP LAW    | 06/15/02        | 05/11/04               | 7 0 0                      |
| TRAFFICKING IN COCAINE    |                 | 10/25/84               | 70 0 0                     |
| TRAFFICKING IN CRACK COCA | 02/21/02        | 05/04/04               | 7 0 0                      |
| HAND/DIST CRACK-2ND OFF   | 06/15/02        | 05/11/04               | 7 0 0                      |
| ILLEGAL DRUGS-POSSESS     | 06/15/02        | 05/11/04               | 1 0 0                      |
| ILLEGAL DRUGS-POSSESS     | 06/15/02        | 05/11/04               | 1 0 0                      |
| POSSESSION OF WEAPON      | 06/15/02        | 05/11/04               | 1 0 0                      |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0911

ROA 0912

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00172728

NAME: STOKES, JOHNNY

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 12/18/58

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 09/27/04

RELEASE DATE: 04/26/14

TOTAL SENTENCE: 25 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

01/06/19

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN COCAINE

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| ARMED ROBBERY             | 09/21/03        | 09/23/03               | 18 0 0                     |
| ASSLT & BATT W/INTNT KILL | 09/21/03        | 09/23/03               | 18 0 0                     |
| COCAINE DISTRIBUTION      | 04/27/90        | 04/30/90               | 15 0 0                     |
| COCAINE POSSESS           | 04/27/90        | 04/30/90               | 15 0 0                     |
| TRAFFICKING IN COCAINE    | 04/27/90        | 04/30/90               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0912

ROA 0913

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00179548

NAME: MCDANIEL, JAMES MARK

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 11/14/53

LOCATION: MCCORMICK

STATUS: INCARCERATED

ADMISSION DATE: 07/30/91

RELEASE DATE:

TOTAL SENTENCE: 999 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE INITIAL PAROLE DATE  
01/26/11

NEXT PAROLE HEARING DATE  
06/19/15

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* MURDER

CONVICTIONS IN CURRENT COMMITMENT:

| OFFENSE                | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|------------------------|-----------------|------------------------|----------------------------|
| MURDER                 | 01/25/91        | 01/26/91               | 999 99 999                 |
| TRAFFICKING IN COCAINE | 01/26/91        | 01/26/91               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0913

ROA 0914

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00180828

NAME: BENNETT, THOMASON

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 09/08/69

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 12/20/06

RELEASE DATE: 04/12/11

TOTAL SENTENCE: 30 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE INITIAL PAROLE DATE

02/24/11

07/20/09

NEXT PAROLE HEARING DATE

09/22/11

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN COCAINE

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|------------------------|-----------------|------------------------|----------------------------|
| COCAINE POSS INT/DISTR | 12/02/91        | 12/02/91               | 5 0 0                      |
| COCAINE POSS INT/DISTR |                 | 06/19/91               | 5 0 0                      |
| TRAFFICKING IN COCAINE | 06/19/91        | 06/19/91               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0914

ROA 0915

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00181783

NAME: CARPENTER, CHARLES EUGENE

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 05/26/53

LOCATION: EVANS

STATUS: INCARCERATED

ADMISSION DATE: 11/13/91

RELEASE DATE:

TOTAL SENTENCE: 50 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

04/07/40

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN MARIJUANA

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                  | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|--------------------------|-----------------|------------------------|----------------------------|
| TRAFFICKING IN MARIJUANA | 04/07/90        | 06/13/90               | 25 0 0                     |
| TRAFFICKING IN COCAINE   | 04/07/90        | 04/07/90               | 25 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0915



ROA 0916

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00184752

NAME: HALL, EDWARD LEE

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 11/19/51

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 02/06/92

RELEASE DATE: 04/01/14

TOTAL SENTENCE: 40 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

04/26/14

09/17/00

10/16/14

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN CRACK COCA

CONVICTIONS IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| COCAINE POSS INT/DISTR    | 03/26/91        | 03/26/91               | 15 0 0                     |
| TRAFFICKING IN CRACK COCA | 03/26/91        | 03/26/91               | 25 0 0                     |
| CRACK DISTRIBUTION        | 01/29/92        | 03/26/91               | 15 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentences

ROA 0916

ROA 0917

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00187864

NAME: GAUSE, REN ABEL

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 02/25/73

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 06/08/05

RELEASE DATE: 09/01/11

TOTAL SENTENCE: 30 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

09/16/11

04/06/01

07/15/11

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN CRACK COCA

CONVICTIONS IN CURRENT COMMITMENT:

| OFFENSE                    | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|----------------------------|-----------------|------------------------|----------------------------|
| ASSLT&BATTERY-HIGH/AGG NAT | 08/09/93        | 08/07/96               | 4 0 0                      |
| COCAINE POSS INT/DISTR     | 05/31/94        | 03/15/95               | 30 0 0                     |
| COCAINE POSS INT/DISTR     | 07/15/92        | 07/15/92               | 0 15 0                     |
| TRAFFICKING IN CRACK COCA  | 05/31/94        | 03/15/95               | 30 0 0                     |
| CARRY PROHIBITED WEAPON    | 07/15/92        | 07/15/92               | 1 0 0                      |
| FIREARM ON PREMIS-ALCOHOL  | 07/15/92        | 07/15/92               | 2 0 0                      |
| FAIL TO STOP FOR OFFICER   | 05/31/94        | 03/15/95               | 3 0 0                      |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0917

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY**

INMATE 00193419

NAME: GALMAN, RONNIE LEE

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 09/13/67

LOCATION: WALDEN

STATUS: INCARCERATED

ADMISSION DATE: 01/10/97

RELEASE DATE:

TOTAL SENTENCE: 28 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE      INITIAL PAROLE DATE      NEXT PAROLE HEARING DATE  
09/22/21

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN CRACK COCA

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| COCAINE POSSESS           | .               | 03/02/93               | 0 6 0                      |
| COCAINE POSSESS           | .               | 11/09/92               | 1 0 0                      |
| TRAFFICKING IN CRACK COCA | 09/28/96        | 09/28/96               | 25 0 0                     |
| TRAFFICKING IN CRACK COCA | 04/26/95        | 09/28/96               | 28 0 0                     |
| MARIJUANA POSSESS         | 04/26/95        | 09/28/96               | 5 0 0                      |
| MARIJUANA POSSESS         | 09/28/96        | 09/28/96               | 1 0 0                      |
| CARRY PROHIBITED WEAPON   | 04/26/95        | 09/28/96               | 1 0 0                      |
| CARRY PROHIBITED WEAPON   | .               | 11/09/92               | 0 6 0                      |
| DRIVING INFLUENCE LIQUOR  | 12/17/95        | 09/28/96               | 5 0 0                      |
| DRIVING INFLUENCE LIQUOR  | .               | 04/27/95               | 0 0 100                    |
| DRIVING INFLUENCE LIQUOR  | .               | 04/27/95               | 0 6 0                      |
| DRIVING UNDER SUSPENSION  | 12/17/95        | 03/01/93               | 0 3 0                      |
| DRIVING UNDER SUSPENSION  | 09/28/96        | 09/28/96               | 0 6 0                      |
| DRIVING UNDER SUSPENSION  | .               | 04/27/95               | 0 6 0                      |

\* Based on Active Sentences

ROA 0919

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00208563

NAME: HARRIS, STEFEN E.

SOCIAL SECURITY NUMBER: ~~██████████~~

DATE OF BIRTH: 11/15/73

LOCATION: KEARSHAW

STATUS: INCARCERATED

ADMISSION DATE: 05/02/96

RELEASE DATE:

TOTAL SENTENCE: 30 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

11/01/20

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN CRACK COCA

CONVICTIONS IN CURRENT COMMITMENT:

| OFFENSE                   | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|---------------------------|-----------------|------------------------|----------------------------|
| TRAFFICKING IN CRACK COCA | 11/01/95        | 11/01/95               | 30 0 0                     |
| CARRY PROHIBITED WEAPON   | 04/26/96        | 11/03/95               | 1 0 0                      |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0919

ROA 0920

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00215045

NAME: PRIOLEAU, MARIO

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 12/01/75

LOCATION: UNK

STATUS: RELEASE

ADMISSION DATE: 06/22/94

RELEASE DATE: 07/01/11

TOTAL SENTENCE: 25 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

| MAXOUT DATE | INITIAL PAROLE DATE | NEXT PAROLE HEARING DATE |
|-------------|---------------------|--------------------------|
| 07/07/11    | 10/22/00            | 01/19/13                 |

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN COCAINE

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                    | OFFENSE DATE | SENTENCE START DATE | INCARC TIME YRS MOS DYS |
|----------------------------|--------------|---------------------|-------------------------|
| ASSLT&BATTERY-HIGH&AGG NAT | 10/21/93     | 10/21/93            | 10 0 0                  |
| COCAINE POSSESS            | 05/04/93     | 10/21/93            | 5 0 0                   |
| TRAFFICKING IN COCAINE     | 10/21/93     | 10/21/93            | 25 0 0                  |
| POINTING A FIREARM         | 10/21/93     | 10/21/93            | 5 0 0                   |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0920

ROA 0921

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE RECORD SUMMARY

INMATE 00217075

NAME: GONZALES, CARLOS -

SOCIAL SECURITY NUMBER: [REDACTED]

DATE OF BIRTH: 08/30/45

LOCATION: EVANS

STATUS: INCARCERATED

ADMISSION DATE: 11/07/94

RELEASE DATE:

TOTAL SENTENCE: 30 YRS 0 MOS 0 DYS

PROJECTED RELEASE DATES:

MAXOUT DATE

INITIAL PAROLE DATE

NEXT PAROLE HEARING DATE

09/19/19

HAS A FELONY CONVICTION:

MOST SERIOUS OFFENSE: \* TRAFFICKING IN COCAINE

CONVICTION(S) IN CURRENT COMMITMENT:

| OFFENSE                | OFFENSE<br>DATE | SENTENCE<br>START DATE | INCARC TIME<br>YRS MOS DYS |
|------------------------|-----------------|------------------------|----------------------------|
| TRAFFICKING IN COCAINE | 06/27/89        | 01/18/95               | 25 0 0                     |
| TRAFFICKING IN COCAINE | 04/26/89        | 09/19/94               | 30 0 0                     |

INFORMATION IS CURRENT AS OF 08/03/15

\* Based on Active Sentence(s)

ROA 0921

## DRUG TRAFFICKING AUDIT RESULTS

- 65498 – Per Supreme Court Ruling, sentence is parolable. Letter from Ben Aplin, DPPPS dated 01/30/2003 confirmed ruling.
- 126120 – Inmate died on 03/31/2010.
- 138725 – DPPPS deemed inmate parolable
- 141971 – DPPPS deemed inmate parolable
- 164599 – Felony E offense
- 166324 – Interstate Corrections Compact inmate. His sentence did not belong to South Carolina.
- 172728 – Need to pull record.
- 179548 – Incarcerated with a life sentence.
- 180828 – Not mandatory minimum per statute – 44-53-0370(e)(2)(b)1
- 181783 – Sentence updated to mandatory minimum.
- 181966 – Not mandatory minimum per statute – 44-53-0375(C)(2)(a)
- 184752 – Not mandatory minimum per statute – 44-53-0375(C) – over 100 grams
- 187864 – DPPPS deemed inmate parolable – 28-100 grams crack cocaine
- 193419 – Sentence updated to mandatory minimum.
- 208563 – Sentence updated to mandatory minimum.
- 212864 – Sentence updated to mandatory minimum.
- 215045 – Judge wrote on order that sentence was parole eligible.
- 217067 – Convicted of Trafficking Marijuana 10-100lbs – 1<sup>st</sup> – not a mandatory minimum sentence.
- 217075 – Sentence updated to mandatory minimum prior to audit.
- 228711 – Judge wrote on order eligible for parole.
- 235910 – Not mandatory minimum per statute – 44-53-0370(e)(1)(b)
- 243669 – Not mandatory minimum per statute – 44-53-0370(e)(2)(c)

## DRUG TRAFFICKING AUDIT RESULTS.

65498 – Per Supreme Court Ruling, sentence is parolable. Letter from Ben Aplin, DPPPS dated 01/30/2003 confirmed ruling.

126120 – Inmate died on 03/31/2010.

138725 – DPPPS deemed inmate parolable

141971 – DPPPS deemed inmate parolable

164599 – Felony E offense

166324 – Interstate Corrections Compact inmate. His sentence did not belong to South Carolina.

172728 – Need to pull record.

179548 – Incarcerated with a life sentence.

180828 – Not mandatory minimum per statute – 44-53-0370(e)(2)(b)1

~~181783 – Sentence updated to mandatory minimum.~~

181966 – Not mandatory minimum per statute – 44-53-0375(C)(2)(a)

184752 – Not mandatory minimum per statute – 44-53-0375(C) – over 100 grams

187864 – DPPPS deemed inmate parolable – 28-100 grams crack cocaine

193419 – Sentence updated to mandatory minimum.

208563 – Sentence updated to mandatory minimum.

212864 – Sentence updated to mandatory minimum.

215045 – Judge wrote on order that sentence was parole eligible.

217067 – Convicted of Trafficking Marijuana 10-100lbs – 1<sup>st</sup> – not a mandatory minimum sentence.

217075 – Sentence updated to mandatory minimum prior to audit.

228711 – Judge wrote on order eligible for parole.

235910 – Not mandatory minimum per statute – 44-53-0370(e)(1)(b)

243669 – Not mandatory minimum per statute – 44-53-0370(e)(2)(c)



DIVISION OF CLASSIFICATION AND INMATE RECORDS  
INMATE CORRESPONDENCE  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

ROA 0924

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 0924

**Jonathan Eckstrom (C054560)**

**From:** Stephanie Willis (WillisT) <Willis.Stephannie@doc.sc.gov>  
**Sent:** Monday, April 20, 2015 4:54 PM  
**To:** jon@ozmint.com  
**Cc:** Daniel Crooks III (C055212); Michael Stobbe (C001714)  
**Subject:** Charles Carpenter, SCDC# 181783 and Bobby Horne, SCDC# 168786

Good afternoon Mr. Ozmint,

Your letter in reference to the above inmates and their mandatory minimum sentences has been forwarded to this office for review and response. When I first read your letter, I knew exactly what the situation was and what happened with Carpenter. Back in 2010, one of the Records Analyst III's in the office was reviewing an inmate's record for possible jail time credit. When he entered the credit, he also updated the statute and CDR codes for the inmate's Trafficking Cocaine offenses. When he made the entries, he realized that the inmate's offenses reflected 25 years day-for-day. The information was reviewed with the Office of General Counsel and determined to be correct. It was at that time that we realized that our system was not programmed to capture the 25 years day-for-day when the inmate initially came to the agency. We eventually conducted an audit of inmates who were serving same type offenses and, unfortunately, we had some inmates whose sentences were not being reflected correctly. Carpenter's sentences were updated on June 24, 2011 to reflect the mandatory minimum 25 years day-for-day on both sentences. Since his sentences are consecutive to one another, his projected release date was extended considerably.

On the other hand, inmate Horne was released prior to the programming being updated in our automated system. Notification was given to the Attorney General's Office prior to his release as requested by that office. It is unfortunate that they did not question his 25 years day-for-day at that time. His record was updated in 1997 per the drug statute to show that it was non-parolable, however, it was never entered as a day-for-day sentence. Since eligibility for SFII is six (6) months prior to an inmate's release date, inmate Carpenter's SFII date would have been in November 2015 prior to the change in the day-for-day status. Currently, he has an eligibility date of October 2039. Even if Carpenter's sentence was not day-for-day, there would still be a difference of approximately 14 years in the max-out dates of the inmates due to the consecutive structure.

I hope this sheds more light on the situation. 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. Please let me know if there is anything I can do to assist you further in this matter.

Sincerely,

*Stephanie Willis*  
*Assistant Division Director*  
*Inmate Records Office*

Jonathan Eckstrom (C054560)

From: Stephanie Willis (WillisT) <Willis.Stephanie@doc.sc.gov>  
 Sent: Friday, August 14, 2015 2:18 PM  
 To: Dayne Haile (C027588)  
 Subject: FW: Charles Carpenter, SCDC # 181783 and FOIA Requested Information  
 Attachments: Drug Trafficking Audit Report; Audit Report Record Summaries; Carlos Gonzalez, SCDC# 217075; Possible Day-for-Day Released Inmates; DRUG TRAFFICKING AUDIT RESULTS.docx

Ok, see if you can open them now.

From: Stephanie Willis (WillisT)  
 Sent: Friday, August 07, 2015 11:31 AM  
 To: 'jon@ozmint.com' <jon@ozmint.com>  
 Subject: Charles Carpenter, SCDC # 181783 and FOIA Requested Information

Mr. Ozmint,

Attached is information requested by you based on your letter to this Agency dated June 24, 2015. Please review and let me know if there is anything that I may have omitted. The folder entitled Drug Trafficking Audit Report is actually the report that was received that had inmates who were serving sentences for 25 years for Drug Trafficking that were still actively incarcerated. Of the 23 inmates outlined on the list, I initially changed four (4) of them to mandatory day-for-day sentences. One of the inmates, Marisol Uribe, SCDC# 212864, had her sentence changed back per the Office of General Counsel.

Inmate Carlos Gonzalez, SCDC# 217075, whom you may remember, was the inmate who caused the initial audit to take place. The folder bearing his name has some information from Chris Florian, previous attorney for SCDC, a letter from the SC Supreme Court, and a letter from Gonzalez with your response. Your response tells exactly why his record was changed per the statute.

Once again, please let me know if there is anything else needed per your request.

Respectfully yours,

Stephanie Willis  
 Assistant Division Director  
 Inmate Records Office  
 South Carolina Department of Corrections  
 (803) 896-2814

*"Watch your thoughts, for they become words.  
 Watch your words, for they become actions.  
 Watch your actions, for they become habits.  
 Watch your habits, for they become character.  
 Watch your character, for it becomes your destiny."*

ROA 0927

# Bobby Horne

ROA 0927

08/29/2001 11:26

903-737-

PPPS-FS

PAGE 02



# South Carolina Department of Probation, Parole and Pardon Services, Columbia, S. C.

## SUPERVISED FURLOUGH II-A CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS and the SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES that Bobby Horne SCDC No. 168786 and SID No. 74724 who was convicted of Trafficking in Cocaine (29-03-470-002) on 8th day of August, 1990 in the county of Chesterfield meets requirements for supervised furlough as provided for in South Carolina Code of Laws §24-13-720 (Supp. 1983)

It is therefore ORDERED that said prisoner be released on conditional release, upon the satisfactory completion of SCDC's internal inmate release check, under supervision subject to the specific conditions as listed below, until his/her maximum sentence shall expire on March 1<sup>st</sup> 2002

In witness whereof this Certificate is issued this 29th day of September, 2001

|                                                                             |      |
|-----------------------------------------------------------------------------|------|
| Completed Check                                                             | Date |
| Satisfactory Check <input type="checkbox"/> Yes <input type="checkbox"/> No |      |
| By _____                                                                    | SCDC |

By order of  
SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES

By [Signature]  
Theodore H. Kelley, Jr., Administrator for Field Supervision Programs

### CONDITIONS OF SUPERVISION:

This certificate shall not become operative until the following conditions are agreed to by the inmate. Violation of any of these conditions may result in the immediate removal from the program and disciplinary action taken.

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services office on the day of my release or not later than 30 days on the next business day, and as instructed by the Department and I shall make complete and truthful reports to the Agent.  
Please report to the office in the County of Chesterfield Phone: 843-623-7746
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
4. I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work regularly at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws, and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. I understand that I will be responsible for all expenses incurred through medical and/or dental services, and for costs of medicine. I also understand that I will be required to participate in group insurance programs provided by my employer unless I can provide proof of other coverage not necessitating participation.
12. I understand that while on this early release program that I have no parole consideration that I would otherwise be eligible for. I understand that failure to successfully complete this program will prevent any parole consideration from occurring until at least one year from the date of my incarceration.
13. I understand that failure to successfully complete this early release program may be the basis for denial of my participation in subsequent early release programs.

### ADDITIONAL CONDITIONS:

#### INTENSIVE SUPERVISION AND ELECTRONIC MONITORING.

Personally verify that these conditions of supervision have been read and explained to me and in agreement thereto, I attach my signature

Bobby Horne

Offender's Signature

8-30-01

Date

Offender's Address Rte 1, Box 323, Pageland, SC

Personally verify that these conditions of supervision have been read and explained to the offender and he/she has agreed to them

[Signature]

Agent's Signature

AUG 30 2001

Date

# **INMATE NOTIFICATION SUPERVISED FURLOUGH AND EMERGENCY POWERS ACT EARLY RELEASE PROGRAMS**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                       |                                                                                                                                                 |                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| SOURCE:<br><u>168787</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | NAME OF INMATE:<br><u>Bobby Horne</u> | INSTITUTION:<br><u>CEC CL</u>                                                                                                                   | DATE:<br><u>6-4-01</u> |
| I have been advised that I am eligible for the following type of early release:                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                       |                                                                                                                                                 |                        |
| <input type="checkbox"/> Supervised Furlough I (SFI)<br><input type="checkbox"/> Emergency Powers Act I (EPAI)                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                       | <input checked="" type="checkbox"/> Supervised Furlough II (SFI)<br><input type="checkbox"/> SFI/EPAI (Combination)                             |                        |
| 1st Address Information (If approved for release):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                       | 2nd Address Information (If approved for release):                                                                                              |                        |
| Street <u>221 1st St</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                       | Street _____                                                                                                                                    |                        |
| City <u>Chicago</u> Zip Code <u>29725</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                       | City _____ Zip Code _____                                                                                                                       |                        |
| County <u>Cherokee</u> Home Phone <u>706 683 6503</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                       | County _____ Home Phone _____                                                                                                                   |                        |
| Person With Whom to be Living and Relationship:<br><u>Sherry Horne Daughter</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                       | Person With Whom to be Living and Relationship:<br>_____                                                                                        |                        |
| (Name) (Relationship)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                       | (Name) (Relationship)                                                                                                                           |                        |
| Other Phone # (Work, etc.) _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                       | Other Phone # (Work, etc.) _____                                                                                                                |                        |
| (If neighbor or other relative, give name)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                       | (If neighbor or other relative, give name)                                                                                                      |                        |
| Max-Out Date Information (Check appropriate box):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                       |                                                                                                                                                 |                        |
| <input type="checkbox"/> SFI or SFI I understand that while I am on SFI or SFI I will receive Good Time and Earned Work Credit (level 2, five days per week). My current projected max-out date is _____. However, I realize that this date may change in the event I am placed on this program. If or SFI released only, I further understand that if I am granted parole while on SFI, I will serve the remainder of my sentence on parole "day-for-day" and will therefore no longer receive Good Time or Earned Work Credit.                            |                                       |                                                                                                                                                 |                        |
| <input type="checkbox"/> EPAI I understand that while I am on EPAI, I will NOT receive Good Time or Earned Work Credit and this will affect my max-out date. My current projected max-out date is _____. However, I realize that this date will change in the event I am placed on this program. I also understand that if I am revoked from EPAI, I will be penalized by loss of the time served on the program (i.e., "dead time").                                                                                                                       |                                       |                                                                                                                                                 |                        |
| <input type="checkbox"/> SFI/EPAI I understand that I will first complete SFI and then transfer to EPAI. While I am on SFI, I will receive Good Time and Earned Work Credit (level 2, five days per week). While I am on EPAI, I will NOT receive Good Time or Earned Work Credit. My current projected max-out date is _____. However, I realize that this date will change in the event I am placed on this program. I also understand that if I am revoked from EPAI, I will be penalized by loss of the time served on the program (i.e., "dead time"). |                                       |                                                                                                                                                 |                        |
| I hereby certify that the Address Information indicated above is correct and that the Max-Out Date Information and Statement of Conditions on the reverse side of this form have been explained to me. I understand that this type of early release is voluntary.                                                                                                                                                                                                                                                                                           |                                       | I hereby certify that I have explained the Max-Out Date Information and the Statement of Conditions on the reverse side of this form to my/her. |                        |
| <input checked="" type="checkbox"/> I wish to be considered for early release.<br><input type="checkbox"/> I do NOT wish to be considered for early release. Reason: _____                                                                                                                                                                                                                                                                                                                                                                                  |                                       |                                                                                                                                                 |                        |
| SIGNATURE OF INMATE:<br><u>Bobby Horne</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | DATE:<br><u>6-4-01</u>                | SIGNATURE OF CLASSIFICATION CASEWORKER:<br><u>[Signature]</u>                                                                                   | DATE:<br><u>6-4-01</u> |

INSTITUTION  
 WHIP- (FIRM, IN CUB) (Send to Charles Carpenter Branch, Headquarters)  
 VILLAV- RECEPTIONAL IN CUB  
 FIRM RECALL

ROA 0930

STATE OF SOUTH CAROLINA

COUNTY OF

Chester Field

VS.

CASE NO:

90GS4705001

90GS4705002

Bobby Gene Horne  
A/K/A "WORMY"

I, Bobby Gene Horne

, do hereby

enter a plea of Guilty to any or all count(s) 1

(90GS4705002)

of the Superseding Indictment in the above captioned

case.

Conspiracy to Traffic in Cocaine.

FILED

APR 7 1990

LISA G. DUNBAR,  
CLERK, STATE GRAND JURY

Bobby Gene Horne  
DEFENDANT

April 7, 1990  
DATE

George W. Hartsell  
ATTORNEY FOR THE DEFENDANT

Lisa C. Dunbar  
CLERK

April 7, 1990  
DATE

ROA 0930

ROA 0931

SENTENCE

Count 1  
OFFENSE Conspiracy - Trafficking  
in Cocaine 844-53-370(e)

STATE OF SOUTH CAROLINA )

CASE NUMBER 90 GS-47 05002

COUNTY OF CHESTERFIELD )

THE DEFENDANT Bobby Gene Horne 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: credit for time served in Chesterfield County

DATE: August 9, 1990

[Signature]  
PRESIDING JUDGE

COSTS AND ASSESSMENTS:

[Signature]  
Assistant to CLERK OF COURT, CHESTERFIELD COUNTY, S.C.  
State Grand Jury

ORIGINAL FILED

AUG 9 1990

LISA C. BUEGAR,  
CLERK, STATE GRAND JURY

ROA 0931



FILED  
ROA 0932  
APR 7 1990  
LISA C. DUNBAR,  
STATE GRAND JURY

STATE OF SOUTH CAROLINA )  
COUNTY OF CHESTERFIELD )  
STATE OF SOUTH CAROLINA )  
V. )  
BOBBY GENE HORNE )

IN THE COURT OF CLERK,  
GENERAL SESSIONS FOR  
THE FOURTH JUDICIAL CIRCUIT

CASE NO. 90GS4705001  
90GS4705002

PLEA AGREEMENT

AGREEMENT made this 7<sup>th</sup> day of April, 1990, between and among the State of South Carolina, as represented by Assistant Attorney General Sean Kittrell; the Defendant, Bobby Gene Horne, and his attorney, George W. Hartzell, Esquire.

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

1. The Defendant, Bobby Gene Horne, agrees to plead guilty to one count of violating section 44-53-370(e), 1976 Code of Laws of South Carolina, as amended, (e.g. Conspiracy - trafficking in cocaine), which carries a possible sentence of a term of imprisonment of not less than twenty five years nor more than 30 year 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 \$200,000 dollars. *with regard to the possible term of imprisonment he will recommend a sentence of 25 years under the*

2. The Defendant, Bobby Gene Horne, 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, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, *Section (44-53-370)(c) B.G.H. W.H.*

ROA 0932

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 un-cooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

3. The Defendant, Bobby Gene Horne, 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, Bobby Gene Horne, 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, Bobby Gene Horne, 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.

6. The Attorneys for the State agree to dismiss the remaining counts in the Indictments against the Defendant at the time of sentencing.

7. 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.

8. The Attorneys for the Government agree to recommend to any United States Attorney or other State or local prosecutor that the Defendant, Bobby Gene Horne, 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, Bobby Gene Horne, continues to cooperate with any law enforcement agency interested in the information he possesses.

9. 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.

10. 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.

11. The Defendant, Bobby Gene Horne, 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.

12. 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; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

APRIL 7, 1990  
DATE

Bobby Gene Horne  
Bobby Gene Horne  
Defendant

APRIL 7, 1990  
DATE

George W. Hartzell  
George W. Hartzell  
Attorney for the Defendant

APR 7 1990  
DATE

T. TRAVIS MEDLOCK  
Attorney General

By: Sean Rittrell  
Sean Rittrell  
Assistant Attorney General  
State Grand Jury Section

(1) Except as to matters placed on the record on April 7, 1990.

Seatt B 274 bwH

# South Carolina Department of Corrections

P.O. BOX 11707 1441 BROAD RIVER ROAD COLUMBIA, SOUTH CAROLINA 29211-1707  
TELEPHONE (803) 737-1200  
PARSON EVATT Commissioner

July 12, 1993

Mr. Bobby Gene Horne  
SCDC# 168786  
Broad River Correctional Institution

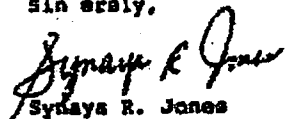
Mr. Horne:

This is in response to your letter addressed to Ms. Sammie Brown regarding your sentence.

Based on clarification from the legal department, Conspiracy to Commit Drug Trafficking is the same as Drug Trafficking. The sentence you received of 25 years and a \$200,000.00 fine is provided under Section 44-53-370(a)(2)(a) of the South Carolina Code. This section further provides that the 25 year term represents a mandatory minimum, thereby disqualifying you from parole consideration. Additionally, per Phase III classification policies and procedures, you are not eligible to be considered for AD until you have served a minimum of 10 years in medium custody. Please refer to page 2 of the October 1991 issue of the About Face.

I regret that this response could not be more favorable. Should you need any further assistance, please consult your classification caseworker.

Sincerely,

  
Synaya R. Jones  
Administrative Assistant  
Division of Classification

SRJ:sss

cc: Ms. Mary Thomas, BRCI  
Central Record  
Institutional Record

ROA 0939

INMATE: Bobby Horne  
DAR. 2114B  
SCDC#: 168786  
FR M: G. Breon, P.A.  
SUBJECT: SFII  
DATE: 9/21/

ROA 0939

Since your offense date is 11/2  
six months prior to your maxout 1/89, you should be eligible for SFII  
must also be six-month discipline date (current date is 3/1/2002). You  
ry free.

8

file



14:29:11 Monday, April 20, 2015

CMTI330D

OMCOMITA

SCDC# > 168786

HORNE, BOBBY GENE

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM  
RELEASE DATE SCREEN

LOC: UNK

SCDC CLASSIFICATION...: VIOLENT

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...:

DNA STATUS...: N/A

GPS REQUIREMENT...: N

PREA DECISION...:

CURRENT SENTENCE: 025-00-000  
025-00-000

CONSECUTIVE SENTENCE ...: N

CURRENT SENT START DATE: 11/21/1989

PROJECTED COMPLETION DATES

MAXOUT DATE .....: 03/01/2002

YOA SIX YEAR DATE: 00/00/0000

INITIAL PAROLE DATE: 00/00/0000

CURRENT EWC ..:

CURRENT EEC ..:

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000000

TOTAL EARNED WORK CREDITS ...: 000000

TOTAL EDUCATION CREDITS ....: 000000

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

LABOR CREW DISQ REASON:

CATEGORY 4 OR 5 OFFENSE

SUPERVISED REENTRY DATE...: 00/00/00

ISS.....:

PFKEYS:

5:HISTORY OF DATE CHANGES

14:29:17 Monday, April 20, 2015

ROA 0941

CMTI310D

SCDC OFFENDER MANAGEMENT SYSTEM

04/20/15

SCDC #: 168786

COMMITMENT APPLICATION

PROJ RELEASE/ELIG AUDIT TRAIL

C023981

HORNE, BOBBY GENE

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY:

CURR SENT SERVING CAT: VIOLENT

MAXOUT

PAROLE

RECALC

RECALC

CHANGE

DATE

DATE

DATE

CODE

REASON

03/01/2002

/ /

02/19/04

MAXREL

03/01/2002

/ /

09/05/01

MOD DETAINER

PAGE.> 0001

PF11-QUIT PF10-MAIN MENU CLEAR-PREVIOUS SCREEN PF8-FORWARD  
PF7-BACKWARD

RN2PS99D  
REPORT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
OFFENDER SUMMARY

INMATE NO: 168786

NAME: HORNE, ROBBY GENE

PERSONAL/IDENTIFICATION DATA

RACE-----:WHITE  
SEX-----:MALE  
HEIGHT-----:5 FT 9 IN  
WEIGHT-----:160  
EYE COLOR-----:BLUE  
HAIR COLOR-----:GRAY OR PARTIALLY GR  
SKIN TONE-----:FAIR  
BODY BUILD-----:MEDIUM  
MARKS/SCARS---:SEE REPORT 3  
FBI NUMBER-----:504273D  
BIRTH DATE-----:09/13/40  
RELIGION-----:~~XXX-XXX~~  
U.S. CITIZEN-----:CITIZEN - NATIVE BORN  
MARITAL STATUS-----:~~XXXXXXXXXX~~  
MEDICAL STATUS-----:NONE ON FILE  
SOCIAL SECURITY #---:~~XXXXXXXXXX~~ 0283  
ATMS CRP ASSIGNMENT:CAMMA

DATA CURRENT AS OF: 04/19/01

CURR STATUS---:INCARCERATED  
CURR INST.-----:LEE  
CURR INST LVL---:MR2  
CURR ASSIGN.---:HORTICULTURE DETAIL  
ESCAPE/ATTEMPT:SEE ESCAPE HISTORY  
HOLD-INT-DETAIN:YES. SEE REPORT 2  
VISITOR WITNESS:NONE ON FILE  
PRIOR CONV OVER 90 DYS---:3  
PRIOR CONV 90 DYS OR LESS:0  
TOTAL SENTENCE-----:25 YRS 0 MOS 0 DYS  
CURR SENT SERVING---:25 YRS 0 MOS 0 DYS  
CURR SENT START---:11/21/89  
EWC JOB LEVEL-----:02075  
CURRENT LOCK-----:DAR2114B  
SCDC ADMIT DTE-----:08/10/98  
PROJ EWC-MAX-OUT---:03/01/2002  
PROJ EWC PAR-ELIG---:01/21/1996  
LABOR CREW/WORK PGM:99/99/9999

COMMITMENT INFORMATION

| SENT   | STATUS                 | CURRENT OFFENSE | INCARC | SENTENCE | CHAR | CNTS | SENT VIOL | CONS | SUSP | CONH |          |
|--------|------------------------|-----------------|--------|----------|------|------|-----------|------|------|------|----------|
|        |                        |                 |        | YRS      | MO   | DYS  | TYPE      | IND  | IND  | YRS  | CNTY     |
| 000001 | TRAFFICKING IN COCAINE | 25              | 0      | 0        | C    | 1    | ST        | TEM  | V    | N    | CHESTERF |
| AT     | NO PROBATION           |                 |        |          |      |      |           |      |      |      |          |

258 days Jail Time

ORIGINAL FILED

AUG 9 1990

LEA C. DUNBAR  
CLERK, STATE GRAND JURY

Count 1

OFFENSE Conspiracy - Trafficking  
in Cocaine §44-53-370(c)CASE NUMBER 90-05002

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

THE DEFENDANT Bobby Gene Horne IS COMMITTED TO THE STATEOR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 25MONTHS/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 credit for time served in Chesterfield CountyDATE August 9, 1990

PRESIDING JUDGE

COSTS AND ASSESSMENTS:

RECEIVED  
AUG 10 1990RECEIVED  
AUG 10 1990  
RECEIVING CENTER  
RECORDS/RECORDS OFFICECLERK OF COURT, CHESTERFIELD COUNTY, SC  
State Grand Jury14 39  
90-05002  
8 18

168786 RELEASE CALCULATION SCREEN  
 CLEAR OR REENTER DATA  
 01300000 TOTAL SENTENCE (YYMMDD)  
 11/21/89 SENTENCE START DATE (INCLUDE JAIL TIME)  
 ----- SUSPENDED SENTENCE (YYMMDD)  
 MAN. ELIG. PAROLE (Y/N)  
 PAROLE ELIG FLAG (1 = 1/4, 2 = 1/3)  
 EWC JOB INFO. LEVEL (FULL, PART, DAYS)  
 (R) D11 TOWARD ABOVE SENTENCE ALL VALUES IN DAYS  
 EWC EARNED  
 GOOD TIME LOST  
 GOOD TIME RESTORED  
 GOOD TIME FORFEITED

\*\*\*\*\* THE FOLLOWING DATES ARE PROJECTED FROM DATA ENTERED ABOVE.  
 THEY DO NOT ACCOUNT FOR PROPOSITION / PAROLE / EPA REVOCATIONS, ESCAPE OR  
 COMBINED SENTENCES WITH DIFFERENT PAROLE / PCH PLACEMENT ELIGIBILITY.  
 \*\*\*\*\*  
 PROJECTED RELEASE DATES  
 WITH GOOD TIME LOST & EWC 11/21/04  
 WITH 0% EWC 11/21/04  
 FULL TIME AND EWC 06/11/11  
 PAROLE ELIG DATE 03/20/99  
 WORK RELEASE ELIG 07/03/95

PAROLE BASED ON 1/3 ELIG

ROA 0944

ROA 0944

08/29/2001 11:06

803-737-3777

PPPS-FS

PAGE 02



# South Carolina Department of Probation, Parole and Pardon Services, Columbia, S. C.

## SUPERVISED FURLOUGH II-A CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS and the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that Bobby Horne SCDC No. 168786 and SID No. 74724 who was convicted of Trafficking in Cocaine (160-09-4705002) on 09 day of August, 1990 in the county of Chesterfield meets requirements for supervised furlough as provided for in South Carolina Code of Laws §24-13-720 (Supp. 1993);

it is therefore ORDERED that said prisoner be released on conditional release upon the satisfactory completion of SCDC's Internal inmate release check, under supervision subject to the specific conditions as listed below, until his/her maximum sentence shall expire on March 1<sup>st</sup> 2002.

In witness whereof this Certificate is issued this 4th day of September, 2001

|                    |                              |                             |       |
|--------------------|------------------------------|-----------------------------|-------|
| Completed Check    | _____                        | Date                        | _____ |
| Satisfaction Check | <input type="checkbox"/> Yes | <input type="checkbox"/> No |       |
| By                 | _____                        |                             |       |
|                    | SCDC                         |                             |       |

By order of  
SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES

Theodore H. Kelley Jr., Administrator for Field Supervision Programs

### CONDITIONS OF SUPERVISION:

This certificate shall not become operative until the following conditions are agreed to by the inmate. Violation of any of these conditions may result in the immediate removal from the program and disciplinary action taken.

- I shall report to person to the South Carolina Department of Probation, Parole and Pardon Services office on the day of my release or not later than 8:30 AM on the next business day and as instructed by the Department and I shall make complete and truthful reports to the Agent.  
Please report to the office in the County of Chesterfield Phone 843-673-7746
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
- I shall not violate any Federal, State, or local laws, and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
- I shall pay a supervision fee as determined by the Department.
- I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby agree that I may otherwise have been ordered to and agree to return to South Carolina when directed by my Agent, the court, or my agent.
- I shall pay all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- I shall follow the advice and instructions of my Agent and agree to comply with any further conditions imposed by the Department or its Agents.
- I agree that I will be responsible for all expenses incurred through medical and/or dental services, and for costs of medicine. I also understand that I am required to participate in group and individual programs as directed by my employer unless I can provide proof of other coverage not necessitating participation.
- I understand that while on this early release program that I waive any parole consideration that I would otherwise be eligible for. I understand that failing to successfully complete the program will prevent any parole consideration from occurring until at least one year from the date of my release.
- I understand that failure to successfully complete an early release program may be the basis for denial of my participation in subsequent early release programs.

### ADDITIONAL CONDITIONS:

#### INTENSIVE SUPERVISION AND ELECTRONIC MONITORING.

Whereby, said inmate these conditions of supervision have been read and explained to me and in agreement thereto, I attach my signature

Bobby Horne

8-30-01

Date of Release

Date

Offender's Address: Rte 1, Box 321, Pageland, SC

Whereby, said inmate these conditions of supervision have been read and explained to me and in agreement thereto, I attach my signature

Minth S. Davis

AUG 30 2001

Date of Release

Date

Print Name, Title, and Date of Release (if applicable)

Ozmin Firm FOIA Charles Carpenter 181783 & Bobby Horne 168786  
4/24/2015 GC147



1245  
REPOSITIONING OF RELEASE/CLASSIFICATION REVIEW

INMATE NAME: HORNE, BOBBY GENE BAC NUMBER 148784

DATE OF RECLASSIFICATION REVIEW: 12/01/94 CURRENT LOCATION: 0581

PROJECTED RELEASE AND PROGRAM ELIGIBILITY DATES: 01/02/94

- A. SENTENCE EXPIRATION (MAXIMUM) 12/14/94
- B. INITIAL PAROLE ELIGIBILITY
- C. NEXT SCHEDULED PAROLE HEARING 06/01/95
- D. WORK RELEASE ELIGIBILITY 12/28/94
- E. INMATE WORK RELEASE ELIGIBILITY 12/28/94

DATES (ABOVE) ARE BASED ON THE CURRENT INFORMATION

- A. CURRENT SENTENCE SERVICE 12/01/94
- B. SENTENCE START DATE 12/01/94
- C. CURRENT EUC LEVEL ASSIGNMENT
- D. CURRENT EEC LEVEL ASSIGNMENT

## RECLASSIFICATION REVIEW

- A. YOUR CUSTODY/SECURITY LEVEL PRIOR TO REVIEW B3
- B. YOUR REVIEW RESULTED IN A NEW CUSTODY/SECURITY LEVEL 264 MID-HIGH IN CAT B3 + A13
- C. THE CLASSIFICATION COMMITTEE

DISPOSAL: REMAIN - N3, B13  
RECOMMENDATION

A. PROPOSED ACTION REQUIRES FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES:

B. A CLASSIFICATION CASEWORKER WILL NOTIFY YOU WHEN A FINAL DECISION IS MADE

C. YOUR RECLASSIFICATION REVIEW IS SCHEDULED FOR 06/97

D. RECOMMENDATIONS FOR YOUR NEXT REVIEW PERIOD ARE AS FOLLOWS:

ENGLISH SCHOOL  
M. Smith & S.B.  
40 High Lane  
This program is approved

CLASSIFICATION REVIEW

CLASSIFICATION SUPERVISOR OR CASEWORKER

INTERNAL CLOSURE  
OZMINT FIRM FOIA Charles Carpenter 181783 & Bobby Horne 148784  
4/24/2015 GC152



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
**OFFENDER RECLASSIFICATION REPORT OF 06/04/96**

PART I: RISK ASSESSMENT  
 168786 HORNE, BOBBY GENE  
 ASSIGNMENT: CUSTODY/SEC: BL3 AINS GROUP: GAMMA REVIEWED: ST

SENTENCE: 35 YRS. 0 MOS. 0 DYS. CENTRAL MONITORING CASE: Y 110

**SECTION A. SECURITY SCORE**

| CRITERION                                                       | SCORE | CATEGORY | SCORE         |
|-----------------------------------------------------------------|-------|----------|---------------|
| 1. SEVERITY OF CURR. OFF. 3545 TRAFFICKING IN COCAINE           | 4     | 4        | 747           |
| 2. REMAIN. TIME TO SERVE BEFORE PAR. EL TO RELEASE 99 YRS.      | 0     |          | 40            |
| 3. VIOLENT OFFENSE WITH PRIOR VIOLENT CONVICTION IN             | 0     |          | 0             |
| 4. TYPE OF DETAINER/HOLD/NOTIFY: NOTIFY                         | 0     |          | 0             |
| 5. <u>Columbia Trafficking in Cocaine</u>                       |       |          |               |
| 6. NUMBER OF PRIOR COMMITMENTS OVER 90 DAYS (2)X14= (MAX OF 10) | 28    |          | 28            |
| 7. HISTORY OF THREATENING/ASSAULTIVE/VIOLENT BEHAVIOR:          | 0     |          | 0             |
| 8. DATE OF LAST MAJOR INCIDENT: 00/00/00                        | 0     |          | 0             |
| 9. DATE OF LAST MINOR INCIDENT: 00/00/00                        | 0     |          | 0             |
| 10. REMARKS: NONE NOTED                                         |       |          |               |
| <b>TOTAL RECLASSIFICATION SECURITY SCORE</b>                    |       |          | <b>B15 **</b> |

**SECTION B. SECURITY CONCERN (OVERRIDE)**  
 THERE ARE NO KNOWN INCIDENTS OF ESCAPE/RELATED OFFENSES AT REVIEW

**SECTION C. ADJUSTMENT SCORE**

|                                                                  |               |
|------------------------------------------------------------------|---------------|
| 1. PERCENTAGE OF TIME SERVED (BASED ON MAXOUT): (54)X3 =         | 162           |
| 2. CURRENT AGE 55                                                | 165           |
| 3. EVALUATION OF JOB PERFORMANCE: EXCEL (SEE NEEDS ASSESSMENT)   | 96            |
| 4. EVALUATION OF PROGRAM PERFORMANCE: AVG (SEE NEEDS ASSESSMENT) | 16            |
| 5. NUMBER OF MINOR DISC. IN LAST 12 MONTHS: 0                    | 25            |
| 6. NUMBER OF MAJOR DISC. IN LAST 12 MONTHS: 0                    | 75            |
| <b>TOTAL RECLASSIFICATION ADJUSTMENT SCORE</b>                   | <b>539 **</b> |

**SECTION D. LINE 4 MINUS LINE 13) 276**

**SECTION E. NARRATIVE REVIEW**

1. CURRENT SECURITY LEVEL: AL3

2. REASON FOR REVISION: REFUSAL TO COMPLY

3. RECOMMENDATIONS: PL3 NEXT SCHEDULED REVIEW: 12/96

4. CURRENT PLACEMENT: PL3 DATE: 6/7/96

5. GRADE EDUCATION AND NOT IN SCHOOL: NO DATE: 6/20/96

6. SIGNATURE: Coc DATE: 6/20/96

7. SIGNATURE: 200 DATE: 6/20/96

8. REGIONAL APPROVAL: YES X NO

9. CENTRAL RECORD

10. INSTITUTIONAL RECORD

DATE PRINTED: 06/04/96  
 VERSION NUM: M9202

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER**

|                                                                                                                                                                                                    |                                                                                               |                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------------|
| <b>Date</b><br>January 9, 1996                                                                                                                                                                     | <b>TO: (Name and Title of Staff Member)</b><br>Cheskerfield Classification Caseworker - South |                                              |
| <b>SCDC #</b><br>168786                                                                                                                                                                            | <b>NAME</b><br>Bobby Gene Horne                                                               |                                              |
| <b>WORK ASSIGNMENT</b><br>Horticulture                                                                                                                                                             |                                                                                               | <b>LIVING QUARTERS</b><br>#1245 Cheskerfield |
| <b>REQUEST</b> (State completely, giving full details. Use back of page if necessary)<br><p>Please provide me the total amount of good-time and Earned Work Credit that I have earned to date.</p> |                                                                                               |                                              |
| <b>DISPOSITION BY STAFF MEMBER</b><br><p>Earned work Credit: 773<br/>Total Good Days Earned: 340</p>                                                                                               |                                                                                               |                                              |
| <b>DATE</b><br>1-9-96                                                                                                                                                                              | <b>SIGNATURE</b><br>Kaye Bunk                                                                 |                                              |

WTA 111 (REVISED 8/84)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
OFFENSE RECLASSIFICATION REPORT 12/11/95

PART I: RISK ASSESSMENT  
#AB786 HORNE, BOBBY GENE INST: LEE  
#50MMNT: CUSTODY/SEC: BL3 AIMS GROUP: 0AHH

EFFICIENCY: 25 YRS. 0 MOS. 0 DYS. CENTRAL MONITORING CASE: Y

| SECTION A. SECURITY SCORE                              | CATEGORY | SCORE |
|--------------------------------------------------------|----------|-------|
| SEVERITY OF CURR. OFFENSE: 3545 TRAFFICKING IN COCAINE | 4        | 747   |
| MAND. TIME TO SERVE BEFORE PAR. ELIG./RELEASE: 99 YRS. |          | 40    |
| VIOLENT OFFENSE WITH PRIOR VIOLENT CONVICTION: N       |          |       |
| TYPE OF DETAINER/HOLD/NOTIFY: NOTIFY                   | 0        | 0     |

*Cula. - Trafficking in Cocaine*

|                                                         |                           |
|---------------------------------------------------------|---------------------------|
| NUMBER OF PRIOR COMMITMENTS OVER 90 DAYS: (2) X 10 = 20 | 20                        |
| CATEGORY OF THREATENING/ASSAULTIVE/VIOLENT BEHAVIOR:    | 0                         |
| DATE OF LAST MAJOR INCIDENT: 00/00/00                   | NUM OF MAJOR INCIDENTS: 0 |
| DATE OF LAST MINOR INCIDENT: 00/00/00                   | NUM OF MINOR INCIDENTS: 0 |
| REMARKS:                                                |                           |

TOTAL RECLASSIFICATION SECURITY SCORE: 815 \*\*

SECURITY CONCERN (OVERRIDE)  
#1 PL A REASHE NOT KNOWN INCIDENTS OF ESCAPE/RELATED OFFENSES AT REVIEW

| SECTION B. ADJUSTMENT SCORE                                    | SCORE |
|----------------------------------------------------------------|-------|
| PERCENTAGE OF TIME SERVED (BASED ON MAXOUT): (50) X 3 = 150    | 150   |
| POINT 3.5: 55                                                  | 145   |
| ADJUSTMENT OF JOB PERFORMANCE: EXCEL (SEE NEEDS ASSESSMENT)    | 76    |
| ADJUSTMENT OF PROGRAM PERFORMANCE: POOR (SEE NEEDS ASSESSMENT) | 0     |
| NUMBER OF MINOR DISC. IN LAST 12 MONTHS: 0                     | 25    |
| NUMBER OF MAJOR DISC. IN LAST 12 MONTHS: 0                     | 75    |

RECLASSIFICATION ADJUSTMENT SCORE: 511 \*\*

NET SCORE (LINE 8 MINUS LINE 13): 304

RECLASSIFICATION REVIEW  
SECURITY LEVEL: AL3  
OVERRIDE - REFUSAL TO COMPLY  
NEXT SCHEDULED REVIEW: 06/96  
DATE: 12/15/95  
DATE: 1/4/96

REQUIRING REGIONAL APPROVAL YES ☒ NO  
CENTRAL RECORD  
INSTITUTIONAL RECORD  
DATE PRINTED: 12/15/95  
VERSION NUM M9202

ROA 0951

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
OFFENDER RECLASSIFICATION REPORT OF 12/11/95  
PROGRAM STATUS REVIEW**

## PART 11. NEEDS ASSESSMENT

INMATE: 0168786  
HORNE, BOBBY GENEINST: LEE  
CIS TOP/SEC: BL3ASSIGNMENT: 0063  
AIMS GRP: GAMMA

REASON FOR NEEDS ASSESSMENT REVIEW: 6 MONTH REVIEW

METHOD: COMMITTEE

PROGRAM RECOMMENDATIONS  
FROM LAST REVIEW:02 ADULT ED 9-12  
037 COGNITIVE THERAPYPROGRAM PARTICIPATION  
SINCE LAST REVIEW*Not in school  
(No plans to attend)*RECOMMENDED PROGRAMS  
OR CHANGED037 COGNITIVE THERAPY  
035 ADULT ED 9-12

WORK ORDERED PROGRAMS IN ACTION TAKEN:

CURRENT EDUC LEVEL: 02  
CURRENT DESCRIPTION: HORTICULTURISTCURRENT PROJ MAXOUT DATE: 11/14/01  
CURRENT PROJ PAROLE ELIG: 00/00/00

WORK EVALUATION:

RECOMMENDED WORK CHANGES:

*Excellent**No changes recommended*

OPPORTUNITY TO PARTICIPATE IN MEANINGFUL PROGRAMS: Y  
 PSYCHOLOGICAL FACTORS: N

QUALITY OF PERFORMANCE: EXCEL  
 QUALITY OF PROGRAM PERFORMANCE: POOR

APPROPRIATE REPRESENTED

*Shirley P. Hest, CCIV**11/11/95**Unit Manager*

COMMENTS:

*Completed 7th grade (Not sent)**Clear disc record**No Escapes**Detained 10/91 Cpl.**Next Reclas 6/96**(Aims reviewed)*

BY: *Bobby Horne*  
 INMATE: BOBBY HORNE

REPRODUCTION OF ORIGINAL RECORDS

Ozmin Firm FOIA, Charles Carpenter 181783 & Bobby Horne 168786  
 4/24/2015 GC156

DATE PRINTED: 12/11/95

ROA 0951

INMATE NAME: HORNE, BOBBY GENE SCDC NUMBER: 168786

DATE OF RECLASSIFICATION REVIEW: 12/11/95 CURRENT LOCATION: 0551

## 1) PROJECTED RELEASE AND PROGRAM ELIGIBILITY DATES AS OF: 02/23/96

- A) SENTENCE EXPIRATION (MAXOUT) 11/14/01
- B) INITIAL PAROLE ELIGIBILITY 7/1/97
- C) NEXT SCHEDULED PAROLE HEARING 00/00/00
- D) WORK RELEASE ELIGIBILITY 12/28/99
- E) INMATE WORKER ELIGIBILITY 11/14/94

## 2) DATES (ABOVE) ARE BASED ON THE FOLLOWING INFORMATION:

- A) CURRENT SENTENCE SERVING YRS MO DYS 25 0 10
- B) SENTENCE START DATE 11/21/89
- C) CURRENT EUC LEVEL/ASSIGNMENT 02
- D) CURRENT EC LEVEL/ASSIGNMENT

## 3) RECLASSIFICATION REVIEW:

- A) YOUR CUSTODY SECURITY LEVEL PRIOR TO REVIEW BL3
- B) YOUR REVIEW RESULTED IN A NET SCORE OF 304 WHICH INDICATES AL3
- C) YOUR CUSTODY SECURITY LEVEL
- D) THE CLASSIFICATION COMMITTEE:

DISAGREES: REMAIN IN=) BL3  
RECOMMENDS:4) THE PROPOSED ACTION REQUIRES FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES:  
WARDEN

YOUR CLASSIFICATION CASEWORKER WILL NOTIFY YOU WHEN A FINAL DECISION IS MADE

YOUR NEXT RECLASSIFICATION REVIEW IS SCHEDULED FOR 06/96

## RECOMMENDATIONS FOR YOUR NEXT REVIEW PERIOD ARE AS FOLLOWS:

*inmate disciplinary free. Enroll in school, get involved in programs, school, he recommends Cognitive Therapy for next 6 mos. Committee recommended to Warden Davis that inmate remain in BL3 custody. Need to enroll in school, need programs*

*Y. Blandshaw*

CLASSIFICATION SUPERVISOR OR CASEWORKER

12-15-  
DATEINSTITUTIONAL RECORDS  
INSTITUTIONAL RECORDS

# **SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** **"A" CUSTODY CHECKLIST**

SCDC# 168786 NAME OF INMATE: Bobby Horne INSTITUTION: Lee

A. IS WITHIN 5 YEARS OF PAROLE DATE OR MAX-OUT DATE (LIFE SENTENCE WITHIN 5 YEARS OF PAROLE DATE) OR QUALIFIES UNDER PHASE III GRANDFATHER REQUIREMENT FOR LONG TERM OFFENDERS? ☐ Yes, continue ☒ No, ineligible  
 PAROLE ELIGIBILITY DATE: \_\_\_\_\_  
 MAX-OUT DATE: 11-19-2008  
 \*10 YEAR ELIGIBILITY DATE: \_\_\_\_\_

B. SCORES IN THE "A" CUSTODY RANGE: ☐ Yes, continue ☐ No, ineligible

C. ADVANCED TO BL 3 THROUGH RECLASSIFICATION: ☐ Yes, continue ☐ No, ineligible

D. HAS COMPLETED MANDATORY TIME TO SERVE FOR "A" CUSTODY: ☐ Yes, continue ☐ No, ineligible  
 (Round sentence to closest whole year using standard rounding guidelines)

|                  |                            |                |   |                         |
|------------------|----------------------------|----------------|---|-------------------------|
| CATEGORY 1 or 2: | SENTENCE (Cap at 10 years) | = one month    | = | MANDATORY TIME TO SERVE |
| CATEGORY 3 or 4: | SENTENCE (Cap at 15 years) | = two months   | = | MANDATORY TIME TO SERVE |
| CATEGORY 5:      | SENTENCE (Cap at 20 years) | = three months | = | MANDATORY TIME TO SERVE |

SENTENCE START DATE

MANDATORY TIME SERVE

EARLIEST "A" CUSTODY  
ELIGIBILITY DATE

\* Date inmate meets Phase III grandfather requirement for long term offenders committed to SCDC prior to 9/3/91.

\*\* Date must be adjusted until it is within eligibility date as indicated in A. above.

E. CLEAR DISCIPLINARY RECORD FOR 12 MONTHS (Based on the commission date of an offense resulting in any type of disciplinary action as defined below): ☐ Yes, continue ☐ No, ineligible

- No adjustment committee action resulting in a guilty disposition
- No failure to earn good time in lieu of an adjustment committee action
- No administrative hearing in lieu of adjustment committee action for inmates ineligible to earn good time
- No administrative transfers or custody reduction for failure to adjust
- No additional sentence imposed by street court for institutional infractions committed

F. PSYCHOLOGICAL REQUIRED: ☐ Yes, explain ☐ No

G. COMMENTS

COMPLETED BY

*[Signature]*

DATE: 12 11 94

DISTRIBUTION

Central Recor  
Institutional Record

Ozmint Firm FOIA Charles Carpenter 181783 & Bobby Horne 168786  
 4/24/2015 4:08:57P.

MTI330D

SCDC OFFENDER MANAGEMENT SYSTEM  
RELEASE DATE SCREEN

11/17/93

CDC ID: 00168786  
HORNE, BOBBY GENE

SALLEY  
LOC: LEE

OFFENDER CATEGORY: VIOLENT

TOTAL SENTENCE .... 025-00-000  
CURRENT SENTENCE .. 025-00-000

CONSECUTIVE SENTENCE ... N  
CURRENT SENT START DATE: 11/21/1989

PROJECTED COMPLETION DATES

MAXOUT DATE ..... 03/29/2004  
FULL TIME ..... 03/10/2011  
GOOD TIME ..... 04/17/2004  
INITIAL PAROLE DATE: 0/ 0/ 0 0

OFFENDER TYPE..... ADULT-STRAIGHT SENTENCE  
CURRENT EWC .. NOT CURRENTLY EARNING EWC  
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 ..... 000940  
TOTAL EARNED WORK CREDITS ... 000391  
TOTAL EDUCATION CREDITS ..... 000000  
TOTAL EXTRA EARNED CREDITS .. 000  
TOTAL SERVICE TIME EARNED ... 001436

WORK RELEASE ELIG DATE: 10/22/2001  
SHORT TERM WK REL DATE: 08/21/2003  
EPA DATE ..... 99/99/9999  
SFII ..... 99/99/9999  
SFII/EPA ..... 99/99/9999  
SFI ..... 99/99/9999

PFKEYS: S: HISTORY OF DATE CHANGES

ROA 0954

ROA 0954

CHT1330D

SCDC OFFENDER MANAGEMENT SYSTEM  
RELEASE DATE SCREEN

06/21/93

LITTLJA

SCDC ID: 00168786

LOC: BROAD RIV

HORNE, BOBBY GENE

OFFENDER CATEGORY: VIOLENT

TOTAL SENTENCE ....: 025-00-000

CONSECUTIVE SENTENCE ...: N

CURRENT SENTENCE ..: 025-00-000

CURRENT SENT START DATE: 11/21/1989

PROJECTED COMPLETION DATES

OFFENDER TYPE.....: ADULT-STRAIGHT SENTENCE

MAXOUT DATE .....: 11/11/2001

CURRENT EWC ..: 2 F 7

FULL TIME .....: 08/13/2011

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

GOOD TIME .....: 05/21/2004

REST CTR COMPLETION DATE: 0/ 0/ 0 0

INITIAL PAROLE DATE: 0/ 0/ 0 0

NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

TOTAL GT DAYS EARNED .....: 000860

WORK RELEASE ELIG DATE: 12/23/1999

TOTAL EARNED WORK CREDITS ...: 000318

SHORT TERM WK REL DATE: 05/21/2001

TOTAL EDUCATION CREDITS .....: 000000

EPA DATE .....: 99/99/9999

TOTAL EXTRA EARNED CREDITS ..: 000

SFII .....: 99/99/9999

TOTAL SERVICE TIME EARNED ...: 001290

SFII/EPA .....: 99/99/9999

SFI.....: 99/99/9999

PFKEYS

5: HISTORY OF DATE CHANGES

ROA 0955

ROA 0955



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
OFFENDER RECLASSIFICATION REPORT**

**PART I: RISK ASSESSMENT**

168786 HORNE, BOBBY GENE

ASSIGNMENT:

CUSTODY/SEC: BL3

AIMS GROUP: GAMMA

INST: BROAD RIV

SENTENCE: 25 YRS. 0 MOS. 0 DYS. CENTRAL MONITORING CASE: Y

**SECTION A. SECURITY SCORE**

|                                                                                                                 | CATEGORY | SCORE |
|-----------------------------------------------------------------------------------------------------------------|----------|-------|
| 1. SEVERITY OF CURR.OFF..... 3545 TRAFFICKING IN COCAINE                                                        | 4        | 747   |
| 2. HAND. TIME TO SERVE BEFORE PAR. ELIG/RELEASE.... 25 YRS.<br>VIOLENT OFFENSE WITH PRIOR VIOLENT CONVICTION: N |          | 25    |
| 3. TYPE OF DETAINER/HOLD/NOTIFY: NOTIFY                                                                         | 4        | 6     |
| 4. NUMBER OF PRIOR COMMITMENTS OVER 90 DAYS..... (2)X14= (MAX OF 10)                                            |          | 28    |
| 5. HISTORY OF VIOLENCE                                                                                          |          | 6     |
| DATE OF LAST MAJOR INCIDENT: 00/00/00 NUM OF MAJOR INCIDENTS: 0                                                 |          |       |
| DATE OF LAST MINOR INCIDENT: 00/00/00 NUM OF MINOR INCIDENTS: 0                                                 |          |       |
| ITEMS NONE NOTED                                                                                                |          |       |

6. FINAL RECLASSIFICATION SECURITY SCORE..... 800 \*\*

~~MINIMUM SECURITY CONCERN (OVERRIDE)~~

THERE ARE/ARE NOT KNOWN INCIDENTS OF ESCAPE/RELATED OFFENSES AT REVIEW

**SECTION B. ADJUSTMENT SCORE**

|                                                                |     |
|----------------------------------------------------------------|-----|
| PERCENTAGE OF TIME SERVED (BASED ON MAXOUT): (25)X3 =          | 75  |
| AGE..... 52                                                    | 165 |
| EVALUATION OF JOB PERFORMANCE: EXCEL (SEE NEEDS ASSESSMENT)    | 96  |
| EVALUATION OF PROGRAM PERFORMANCE: GOOD (SEE NEEDS ASSESSMENT) | 32  |
| NUMBER OF MINOR DISC. IN LAST 12 MONTHS: 0                     | 25  |
| NUMBER OF MAJOR DISC. IN LAST 12 MONTHS: 0                     | 75  |

7. RECLASSIFICATION ADJUSTMENT SCORE..... 468 \*\*

8. TOTAL SCORE (LINE 13)..... 332

**SECTION C. INTERACTIVE REVIEW**

RECLASSIFICATION LEVEL ..... AL3  
OVERRIDE - MIN SECURITY GUIDELINES  
NEXT SCHEDULED REVIEW: 06/93  
NO CODE

S/ *Daniel Little* DATE: 12/8/92

RECLASSIFIED BY AL3. REM BL3 HAVE NOT BEEN HAND TIME

S/ *[Signature]* DATE: 12/11/92

*Conc*

APPROVAL YES ☒ NO

RECORD

RECEIVED

DATE PRINTED: 12/03/92  
VERSION NUM: H9202

CLSF050D

SCDC OFFENDER MANAGEMENT SYSTEM  
RECLASSIFICATION  
ADMINISTRATIVE REVIEW

12/03/92  
LITTLEJA

SCDC # 168786

HORNE, BOBBY GENE

CURR.LOC: BROAD RIV AIMS: GAMMA

REVIEW INST: BROAD RI AS OF: 12/03/92

SECURITY SCORE... 0800

NET SCORE (SEC MINUS ADJ)... 0332

ADJUSTMENT SCORE. 0468

CUSTODY/SEC. FROM NET SCORE.. AL3

CUST/SEC. BL3

NOD

KNOWN ESCAPES/RELATED OFFENSES) N

COMMITTEE DECISION.....) 0 OVERRIDE

PRIMARY OVERRIDE REASON (1)....) U MIN SECURITY GUIDLINES

SECONDARY OVERRIDE REASON (2)...

OTHER OVERRIDE REASON (3).....)

REMARKS) SCORED FOR ADV AL3, REM BL3 HAVE NOT SERV HAND TIME

RECOMMENDED CUSTODY/SEC....) BL3

RECOMMEND INST. TRANSFER.) N

RECOMMENDED INSTITUTION....)

NEXT SCHEDULED REVIEW: 06/03/93

NAME OF CHAIRPERSON.) J LITTLE

CENTRAL MONITORING CASE...) Y

WARDEN APPROVAL.....) REASON.)

APPROVED CUST/SEC...)

RESPONSE.)

1. SCHEDULED. WAITING FURTHER APPROVAL.

2. 001 010-MINU CLEAR-PREVIOUS SCREEN

PF8-APPROVAL

PF15-ESCAPE

PF20-RELS

PF12-PRINTCL

ROA 0957

ROA 0957

## DISPOSITION OF RECLASSIFICATION REVIEW

INMATE NAME: HORNE

BOBBY

GENE

SCDC NUMBER:

168786

DATE OF RECLASSIFICATION REVIEW: 06/12/92

CURRENT LOCATION: 0211

## 1) PROJECTED RELEASE AND PROGRAM ELIGIBILITY DATES AS OF: 06/10/92

- A) SENTENCE EXPIRATION (MAXOUT) 11/11/01
- B) INITIAL PAROLE ELIGIBILITY 01/18/94
- C) NEXT SCHEDULED PAROLE HEARING 09/08/00
- D) WORK RELEASE ELIGIBILITY 03/27/94
- E) INMATE WORKER ELIGIBILITY / /

## 2) DATES (ABOVE) ARE BASED ON THE FOLLOWING INFORMATION:

YRS MO DYS

- A) CURRENT SENTENCE SERVING 25 0 0
- B) SENTENCE START DATE 11/21/89
- C) CURRENT EMC LEVEL/ASSIGNMENT 02

*Horticulture/Greenhouse*

## 3) RECLASSIFICATION REVIEW:

- A) YOUR CUSTODY/SECURITY LEVEL PRIOR TO REVIEW BL3
- B) YOUR REVIEW RESULTED IN A NET SCORE OF 303 WHICH INDICATES AL3
- C) YOUR CUSTODY/SECURITY LEVEL
- D) THE RECLASSIFICATION COMMITTEE:
- E) AGREES NEW LEVEL(S) AL3

## 4) THE PROPOSED ACTION REQUIRES FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES:

WARDEN

REGIONAL ADMINISTRATOR

DEPUTY COMMISSIONER FOR OPERATIONS

*on 6/18/92 warden Martin approved your advancement to AL3. WRCL. Your paperwork has been forwarded to HQTS for approval/disapproval. You will be notified once that decision is made.*

## 5) DATES FOR YOUR NEXT REVIEW PERIOD ARE AS FOLLOWS:

- Participate in Recommendations:*
- 1 Adult Ed 1-8*
- 2 Social Worker Referral*

*Scored for advancement AL3.**Anice Little*

RECLASSIFICATION SUPERVISOR OR CASEWORKER

*6/22/92*  
DATE

# SOUTH OF ALABAMA DEPARTMENT OF CORRECTIONS "A" CUSTODY CHECKLIST

SCDC#: 168786 NAME OF INMATE: Bobby G. Horne INSTITUTION: BKCI

- A. IS WITHIN 5 YEARS OF PAROLE DATE OR MAX-OUT DATE (LIFE SENTENCE WITHIN 5 YEARS OF PAROLE DATE) OR QUALIFIES UNDER PHASE III GRANDFATHER REQUIREMENT FOR LONG TERM OFFENDERS: ☒ Yes, continue ☐ No, ineligible  
 PAROLE ELIGIBILITY DATE: 11/11/96  
 MAX-OUT DATE: 11/11/01  
 \*10 YEAR ELIGIBILITY DATE: \_\_\_\_\_
- B. SCORES IN THE "A" CUSTODY RANGE: ☒ Yes, continue ☐ No, ineligible
- C. ADVANCED TO BL 3 THROUGH RECLASSIFICATION: ☒ Yes, continue ☐ No, ineligible
- D. HAS COMPLETED MANDATORY TIME TO SERVE FOR "A" CUSTODY: ☒ Yes, continue ☐ No, ineligible  
 (Round sentence to closest whole year using standard rounding guidelines)

|                     |                                                  |                      |                                                           |
|---------------------|--------------------------------------------------|----------------------|-----------------------------------------------------------|
| CATEGORY 1 or 2:    | SENTENCE (Cap at 10 years)                       | x one month =        | MANDATORY TIME TO SERVE                                   |
| CATEGORY 3 or 4:    | <u>25</u> <u>u</u><br>SENTENCE (Cap at 15 years) | x two months =       | <u>30</u> <u>mon</u><br>MANDATORY TIME TO SERVE           |
| CATEGORY 5:         | SENTENCE (Cap at 20 years)                       | x three months =     | <u>15</u> <u>mon</u><br>MANDATORY TIME TO SERVE           |
| <u>11/21/91</u>     | + <u>30</u> <u>mon</u>                           | =                    | <u>5/21/92</u><br>* EARLIEST "A" CUSTODY ELIGIBILITY DATE |
| SENTENCE START DATE |                                                  | MANDATORY TIME SERVE |                                                           |

\* Date inmate meets Phase III grandfather requirement for long term offenders comm. by SCDC prior to 9/3/91.

\*\* Date is adjusted until it is within eligibility date as indicated in A. above.

- E. CLEAR DISCIPLINARY RECORD FOR 12 MONTHS: (Based on the commission date of an offense resulting in any type of disciplinary action as defined below): ☒ Yes, continue ☐ No, ineligible
- No adjustment committee action resulting in a guilty disposition
  - No failure to earn good time in lieu of an adjustment committee action
  - No administrative hearing in lieu of adjustment committee action for inmates ineligible to earn good time
  - No administrative transfers or custody reduction for failure to adjust
  - No additional sentence imposed by street court for institutional infractions committed
- F. PSYCHOLOGICAL REQUIRED: ☐ Yes, explain ☒ No

G. COMMENTS:

Advancement AL3.

COMPLETED BY: Wade Little

DATE: 6/16/92

DISTRIBUTION: Central Record  
Institutional Record

Ozmit Firm #177 Charles Carpenter 181482 & Bobby Horne 168786  
4/24/2015 GC170

FILED

## DISPOSITION OF RECLASSIFICATION REVIEW

INMATE NAME: HORNE

BOBBY

GENE

SCDC NUMBER:

168786

DATE OF RECLASSIFICATION REVIEW: 12/12/91

CURRENT LOCATION: 0211

## 1) PROJECTED RELEASE AND PROGRAM ELIGIBILITY DATES AS OF: 11/05/91

- A) SENTENCE EXPIRATION (MAXOUT) 08/21/02
- B) INITIAL PAROLE ELIGIBILITY 07/03/96
- C) NEXT SCHEDULED PAROLE HEARING 09/00/00
- D) WORK RELEASE ELIGIBILITY 06/20/94
- E) INMATE WORKER ELIGIBILITY

## 2) DATES (ABOVE) ARE BASED ON THE FOLLOWING INFORMATION:

- A) CURRENT SENTENCE SERVING YRS MO DYS 25 0 0
- B) SENTENCE START DATE 11/21/89
- C) CURRENT EMO LEVEL/ASSIGNMENT 03

*Hert/Specialist*

## 3) RECLASSIFICATION REVIEW

- A) YOUR PREVIOUS SECURITY LEVEL PRIOR TO REVIEW BL3
- B) YOUR REVIEW RESULTED IN A NET SCORE OF 334 WHICH INDICATES AL3
- C) YOUR PREVIOUS SECURITY LEVEL
- D) THE RECLASSIFICATION COMMITTEE
- E) YOUR NEW LEVEL IS AL3

YOUR REVIEW REQUIRES FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES:

WARDEN

ADMINISTRATOR

SUPERVISOR

SUPERVISOR

SUPERVISOR

SUPERVISOR

SUPERVISOR

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SUPERVISOR

AL3, WRCI.

HOTS for a special

notified once a final

review is scheduled for

06/92

has been made.

on 12/19/91, warden Martin

approved your advancement

your paper work has been forwarded to

the case worker will notify you when a final decision is made

has been made.

participate in recommendations:

1. Alcala / Mug Ed.

2. Adult / 180

3. Social Worker Referral.

Recommends advancement AL3,

Grandfather clause.

Janice V. Little

RECLASSIFICATION SUPERVISOR OR CASEWORKER

12/23/91  
DATE

JL

ROA 0961

RECLASSIFICATION REVIEW

INMATE NAME: BOBBY GENE SDC NUMBER: 168786

DATE OF RECLASSIFICATION: 08/02/91 CURRENT LOCATION: 0211

ELIGIBILITY DATES AS OF: 06/08/91  
10/19/03  
04/14/97  
04/14/97  
11/29/94

FOLLOWING INFORMATION:

YRS MO DYS  
25 0 0  
11/21/89

07/Klaxside Grounds

PRIOR TO REVIEW BL3  
NET SCORE OF 340 WHICH INDICATES AL3

DISAGREES: REMAIN IN=) BL3  
RECOMMENDS:

FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES

Mr. Beam approved for you

WE WILL NOTIFY YOU WHEN A FINAL DECISION IS MADE

Questions, Please

VIEW IS SCHEDULED FOR 02/92

REVIEW PERIOD ARE AS FOLLOWS:

be recommended programs:

on (1-8)

Therapy

Referrals

in in BL3; not served on current

will little

LOCATION SUPERVISOR OR CASEWORKER

8/8/91  
DATE

ROA 0961

## DISPOSITION OF INMATE REQUEST

|                                                                                                         |                                            |                          |
|---------------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------|
| Name: <b>Bobby Horne</b>                                                                                |                                            | SCDC #: <b>168786</b>    |
| LOCATION (Institution or Center):<br><b>Broad River Correctional Institution - Lake Monticello Unit</b> |                                            |                          |
| YOUR REQUEST DATED _____ 19 _____                                                                       |                                            | CONCERNING THE FOLLOWING |
| 1. Good Time Restoration                                                                                | 6. Transfer:                               | 11. Earned Work Credit   |
| 2. Job Assignment                                                                                       | 7. Employment Program                      | 12. Release Date:        |
| 3. Work Release                                                                                         | 8. Educational Release:                    | 13. Inmate Pay:          |
| 4. Employment Release:                                                                                  | 9. Custody Change:                         | 14. Protective Custody:  |
| 5. Addition to Visiting List                                                                            | 10. Appeal of Adjustment Committee Action: |                          |

*1-2-91 Prisoner Received document on 1-2-91*  
*2.14 91 Other Prisoner*  
*Changes in your status considered on 1-2-91*  
*See Min Review Complete, Remain in 813*

Has been: ☒ Approved/Granted ( ) Disapproved/Denied ( ) **813**

**EXPLANATION:**

Please be advised that your Crime Conspiracy to Commit Drug Trafficking is now being calculated under one-third (1/3) parole eligibility date instead of one-fourth (1/4). You are now considered under a violent offender. Here are the changes in your dates:

Max out 10/18/03  
 Parole date 04/13/97

Please see me if you have any further questions.

Original: Inmate  
 (cc) Inmate's Original Record  
 Warden's Inmate Record  
 File Copy

S *Linda Houston*  
**Audrey Houston**  
 Classification Caseworker

Title: \_\_\_\_\_  
 Date: **October 1, 1990**

Ozmint Firm FOIA Charles Carpenter & Bobby Horne 168786  
 4/24/2015 GC174

*10/1/90*

ROA 0962

RECEIVED ROA 0963

SEP 8 1994

Parker Evatts, Commissioner  
South Carolina Department of Corrections  
4444 Broad River Road  
Columbia, S.C. 29120

DIVISION OF  
CLASSIFICATION

RECEIVED

AUG 26 1994

Benjamin R. Mc Innis, 165597  
Lee CI Inmates serving mandatory drug sentences  
Lee I  
Chesterfield South Room 1231  
1204 East Church Street  
Bishopville, S.C. 29010

DIRECTOR

Date: August 23, 1994

This is in regards to inmate Thomas Dudley and other unnamed inmates sentenced to mandatory minimum drug statute 44-53-370 (6). According to the statute and SCDC policy those sentenced under this statute must serve there sentence in a medium-maximum prison until within five (5) years of their max-out date. The aforementioned inmates are serving their sentence in "A" custody and work release centers.

We the inmates of Lee CI, serving the same statute as aforementioned inmates are continuously refused advancement to "A" custody and work release. We are informed by the classification committee during reclassification that we are ineligible for "A" custody and work release because we must be within five (5) years of our max-out date.

We the inmates of Lee CI, serving the same statute as aforementioned inmates question the fact of equal treatment and why the classification committee at Lee CI deprive us of equal rights for advancement to "A" custody and work release. Furthermore it suggest SCDC has afforded preferential treatment to the aforementioned inmates.

Therefore, We the inmates of Lee CI, serving the same statute as aforementioned inmates, appeal to Commissioner Parker Evatts for an explanation as to why we the inmates of Lee CI, serving the same statute as aforementioned inmates have been deprived an equal opportunity for advancement to "A" custody and work release.

We, the inmates of Lee CI, serving the same statute as aforementioned inmates await your speedy reply.

Sincerely,

*Benjamin R. Mc Innis*  
Benjamin R. Mc Innis  
The inmates of Lee CI

*Bobby Horne*  
Bobby Horne  
*Harold H. Moss*  
Harold H. Moss  
*Charles E. Thomas*  
Charles E. Thomas  
*Robert L. Keith*  
Robert L. Keith

RECEIVED

SEP 8 1994

cc: Larry Batson

DEPUTY COMMISSIONER  
PROGRAM SERVICES

Ozmin Firm FOIA Charles Carpenter 181783 & Bobby Horne 168786  
4/24/2015 GC175

ROA 0963



11:03:36 Friday, May 12, 2017

GRFI220D  
OMGRIEFA

SCDC OFFENDER MANAGEMENT SYSTEM  
INMATE GRIEVANCE APPLICATION  
ALL GRIEVANCES FILED BY AN INMATE

05/12/17  
C054010

ROA 0964

SCDC ID > 181783  
CARPENTER, CHARLES EUGENE

LOC.: EVANS

| DATE FILED   | GRIEVANCE# | GRIEVANCE<br>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<br>CLASSIFICATION STAFF |                 | GRIEVANCE PROCE |
| 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

ROA 0964

11:03:41 Friday, May 12, 2017

GRFI100D SCDC OFFENDER MANAGEMENT SYSTEM 05/12/17  
OMGRIEFA INMATE GRIEVANCE APPLICATION C054010  
SCDC #: 181783 INQUIRE  
CARPENTER, CHARLES EUGENE RACE/SEX: WM AGE: 63 CURR LOC: EVANS ROA 0965  
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:MENU

ROA 0965

11:03:44 Friday, May 12, 2017

GRFI100D

SCDC OFFENDER MANAGEMENT SYSTEM

05/12/17

OMGRIEFA

INMATE GRIEVANCE APPLICATION

C054010

SCDC #: 181783

INQUIRE

ROA 0966

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: 1253-13

GRIEV TYPE.: G GENERAL GRIE

GRIEV ISSUE.....: CL CLASSIFICATION

DATE OCCURRED...: 09/04/13

GRIEV AGAINST.....: CL CLASSIFICATION STAFF

DATE FILED.....: 09/04/13

DESIGNEE RECD.....:

IGC INITIAL: AG

IGC RECEIVED...: 09/05/13

TEXT/REQUESTED ACTION: I/M STATES THAT HE IS BEING DENIED HIS GOOD TIME AND WORK CREDITS, WANTS GOOD TIME AND WORK CREDITS APPLIED TO HIS RELEASE DATE (NO RTS ATTACHED)

:END

---INSTITUTION-----|---CENTRAL OFFICE---

ACTION DUE DATE.: 10/20/13

DUE DT: 00/00/00

ACTION DATE.....: 09/05/13

ACTION: 00/00/00

HOW RESOLVED.....: INFORMAL

CURR LEVEL: INSTITUTION

INMATE RESPONSE.: ACPT

FINAL DISP: 07 GRIEVANCE PROCESS

APPEAL RECEIVED.: 00/00/00

CREATE BY: BENJAMIN

DATE: 09/05/13

FINAL DISP SERVED: 00/00/00

UPDATED BY: GRAVES

DATE: 09/05/13

GRIEVANCE INFORMATION DISPLAYED FOR INQUIRY ONLY...

PFKEY PF3:ADD PF4:MOD PF6:AUDIT PF8:NEXT PF10:MENU

ROA 0966

11:03:46 Friday, May 12, 2017

GRFI100D SCDC OFFENDER MANAGEMENT SYSTEM 05/12/17  
OMGRIEFA INMATE GRIEVANCE APPLICATION C054010  
SCDC #: 181783 INQUIRE ROA 0967  
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: 1157-13 GRIEV TYPE.: C CLASSIFICATI  
GRIEV ISSUE.....: CL CLASSIFICATION DATE OCCURRED...: 08/02/13  
GRIEV AGAINST.....: DATE FILED.....: 08/02/13  
DESIGNEE RECD.....: IGC INITIAL: JB IGC RECEIVED....: 08/06/13  
TEXT/REQUESTED ACTION: I/M IS ASKING THAT IS GOOD TIME AND WORK CREDIT BE  
REINSTATED (NO RTS ATTACHED)

:END:

---INSTITUTION-----|---CENTRAL OFFICE---|  
ACTION DUE DATE.: 09/20/13 DUE DT: 00/00/00  
ACTION DATE.....: 08/12/13 ACTION: 00/00/00  
HOW RESOLVED.....: INFORMAL CURR LEVEL: INSTITUTION  
INMATE RESPONSE.: ACPT FINAL DISP: 07 GRIEVANCE PROCESS  
APPEAL RECEIVED.: 00/00/00 CREATE BY: BENJAMIN DATE: 08/06/13  
FINAL DISP SERVED: 00/00/00 UPDATED BY: GRAVES DATE: 08/12/13  
GRIEVANCE INFORMATION DISPLAYED FOR INQUIRY ONLY...  
PFKEY PF3:ADD PF4:MOD PF6:AUDIT PF8:NEXT PF10:MENU

ROA 0967

11:03:49 Friday, May 12, 2017

GRFI100D SCDC OFFENDER MANAGEMENT SYSTEM 05/12/17  
OMGRIEFA INMATE GRIEVANCE APPLICATION C054010  
SCDC #: 181783 INQUIRE  
CARPENTER, CHARLES EUGENE RACE/SEX: WM AGE: 63 CURR LOC: EVANS ROA 0968  
PROJ MAXOUT: 04/07/40 PROJ PAROLE: 00/00/00 CURR CUST: MI2

GRIEV LOC: 0531 ECI GRIEV NUM: 0641-03 GRIEV TYPE.: C CLASSIFICATI  
GRIEV ISSUE.....: CL CLASSIFICATION DATE OCCURRED...: 07/24/03  
GRIEV AGAINST.....: DATE FILED.....: 07/28/03  
DESIGNEE RECD.....: IGC INITIAL: SJ IGC RECEIVED....: 07/30/03  
TEXT/REQUESTED ACTION: ALLEDGES THAT SCDC HAS ERRORNEOUSLY CALCULATED HIS START  
DATE. WANTS CORRECTION.

:END

---INSTITUTION-----|---CENTRAL OFFICE---|  
ACTION DUE DATE.: 09/08/03 DUE DT: 04/30/05  
ACTION DATE.....: 02/25/05 ACTION: 08/03/05  
HOW RESOLVED.....: FORMAL CURR LEVEL: CENTRAL OFFICE  
INMATE RESPONSE.: APPL FINAL DISP: 02 GRIEVANCE DENIED  
APPEAL RECEIVED.: 03/01/05 CREATE BY: SPRATTLIN DATE: 07/30/03  
FINAL DISP SERVED: 00/00/00 UPDATED BY: FEE DATE: 08/03/05  
GRIEVANCE INFORMATION DISPLAYED FOR INQUIRY ONLY...  
PFKEY PF3:ADD PF4:MOD PF6:AUDIT PF8:NEXT PF10:MENU

ROA 0968