

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF GENERAL SESSIONS
Indictment: 2015GS463003

South Carolina Department
of Corrections,)

Vs.)

Dontavius Oneal Jones)
Defendant.)

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SC Court of Appeals

ORDER GRANTING RELIEF

THIS MATTER CAME BEFORE THE COURT, on Motion of the Defendant, Dontavius Jones, seeking relief, equitable and otherwise, from the South Carolina Department of Corrections' efforts to remand him back into custody after releasing him in error from his sentence on the above referenced indictment. The Defendant was represented by his attorney, Mindy Hervey Lipinski. The South Carolina Department of Corrections was represented by Christina Bigelow. Matt Shelton appeared for the 16th Circuit Solicitor's Office.

1. Mr. Jones plead and was sentenced on September 1, 2016 to Possession with the Intent to Distribute Marijuana Third Offense and Possession with the Intent to Distribute Crack Cocaine Second Offense and sentenced to two concurrent five year sentences and given credit for the time he had spent in pre-trial detention dating back to December 28, 2015.
2. At some point, due to human or computer error or a combination thereof, the South Carolina Department of Corrections incorrectly calculated Mr. Jones' sentence as both charges being parole eligible offenses, when the Possession with Intent to Distribute Marijuana Third should have been classified as an eighty-five percent offense or non-parole offense.
3. At the time of his release on February 1 of 2018, no part of his pre-release screening or processing further identified the miscalculation in his sentence. As a result, Mr. Jones was released in February of 2018 and successfully served an additional six-month sentence on supervised release.
4. At some point thereafter, an internal audit revealed that Mr. Jones had been prematurely released and should have instead remained incarcerated until March 24, 2020.. As a result, the South Carolina Department of Corrections secured a Bench Warrant from this Court to remand Mr. Jones back into custody and serve the remainder of his sentence.

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5. Mr. Jones then filed a Motion to Quash or Stay Enforcement of the Bench Warrant and asked the Court to grant relief, equitable or otherwise, on February 14, 2019. The Court granted Temporary Relief staying the execution of the Bench Warrant until due process could be afforded Mr. Jones and a hearing was set on March 4, 2019 during a non-jury term and Mr. Jones was ordered to appear. Mr. Jones did appear and an in chambers conference was conducted during which the Court took matters under advisement and asked the parties to return with additional arguments and case law on March 14, 2019. A hearing was conducted on March 14, 2019 with Mr. Jones being present.
6. The Defendant cited Lanier v. Williams, 361 F. Supp 944 (E.D.N.C. 1973), in which a state prisoner sought relief from the court when he too was prematurely released from his sentence and the state department of corrections sought to remand him back into custody. The U.S. District Court found that a person, convicted of a criminal offense has a right to serve his sentence "promptly and continuously, and he cannot be required to serve his sentence in installments." *Id.* At 947. The Lanier court acknowledged the principle as having been explained in White v. Pearlman, 42 F.2d 788 (10th Cir 1930) stated as follows:

"A prisoner has some rights. A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner and he cannot be required to serve it in installments. Certainly a prisoner should have his chance to re-establish himself and live down his past. Yet, under the strict rule contended for by the warden, a prisoner sentenced to five years might be released in a year; picked up a year later to serve three months, and so on ad libitum, with the result that he is left without even a hope of beating his way back."

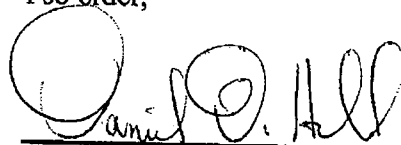
7. The Defendant further cited U.S. v. Merritt 478, F. Supp 804 (D.C. 1979), wherein the U.S. Marshals sought to remand Mr. Merritt back into custody after prematurely releasing him from serving his sentence federal custody. The U.S. District Court recognized an order requiring service of the defendant's sentence would needlessly jeopardize his re-adjustment to society, destabilize his family and life and destroy the economic base he has fought to re-establish all for "no other purpose than to secure blind obedience" to the sentence as imposed. *Id.* At 808.
8. The Court finds that Mr. Jones worked at gainful employment throughout and during his pre-release supervision and has worked hard to re-establish family ties and housing, which was not disputed by the Department of Corrections. Mr. Jones has

been on good behavior and had no additional arrests having now been out of jail for approximately one year. The Court further finds that remanding Mr. Jones back to custody now to serve his final year would seek to un-do the progress he has made and would be inconsistent with the fundamental principles of liberty, justice, and due process. This Court rejects the arguments in opposition made by the 16th Circuit Solicitor's Office.

9. The Court is generally aware that other individuals were also released prematurely and does not take any position on their release or return to custody and limits this decision solely to Mr. Jones as he was the only individual seeking relief from this Court. The Court finds that this is an individual finding of facts and the law that is premised on the unique situation of Mr. Jones, his original crime(s), his service, and behavior during supervised released, his conduct since release, and the remainder of the time left on his particular sentence.

WHEREFORE, for good cause shown, the Court holds that the Defendant should not be remanded back into the custody of the South Carolina Department of Corrections and that he has satisfied his sentence as imposed upon him on September 1, 2016 pursuant to Indictment 2015-GS46-3003.

I so order,



The Honorable Daniel Hall
Chief Administrative Judge
16th Judicial Circuit

This the 29th of March, 2019
York, South Carolina