STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County
The Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case Tracking Number 2019-000570

The State of South Carolina, Appellant,

vs.

Dontavious Oneal Jones, Respondent.

MOTION TO CERTIFY AND EXPEDITE APPEAL TO SOUTH CAROLINA SUPREME COURT

Pursuant to Rule 204(b), SCACR, the State asks this Court to certify the above entitled appeal[1] for consideration by the South Carolina Supreme Court. The State asserts the appeal contains an issue of significant public interest or a legal principle of major importance.

The underlying appeal originated after the South Carolina Department of Corrections (SCDC) determined a number of individuals had been released prematurely. Respondent, serving a lawful, negotiated sentence of five years, was mistakenly released before he had completed eighty-five percent of his sentence. Upon conducting an audit and realizing the error, SCDC had a bench warrant issued for his arrest to remand him to the custody of Corrections to complete the remainder of his sentence. Respondent moved for relief. The State asserted he should be remanded to SCDC but given credit for the time he was mistakenly at liberty. The

[1] The State's Initial Brief of Appellant is attached as Exhibit A.

Honorable Daniel D. Hall issued an Order finding in the interest of justice he should not be remanded to SCDC and finding he has completed his five year sentence.[2]

The State has appealed this ruling seeking to enforce the initial lawful, negotiated sentence. This is a significant legal issue as it is novel to South Carolina, will determine how the courts of this state analyze this factual situation in other cases of individuals similarly released by mistake, and the people of this State have a significant interest in insuring those incarcerated serve the full, actual sentence which was lawfully imposed. See e.g., Artez v. Mulcrone, 673 F.2d 1169, 1171 (10th Cir. 1982) ("[S]ociety has a legitimate interest in ensuring that prisoners convicted of serious crimes not be released before serving their full sentences unless they are rehabilitated."). This case will almost certainly need to be decided by this Court given the nature of the issue involved. As a result, requiring it to first be heard by the Court of Appeals will result in unnecessary delay, especially given the time sensitive nature of the case. Accordingly, this case is one which should be certified to the South Carolina Supreme Court.

Additionally, in order for society to see that the five year sentence is properly carried out, especially if the Court determines Respondent is entitled to credit for the time he has been mistakenly at liberty, then case should be expedited by the Court. If Respondent is ultimately remanded to SCDC and given credit for time mistakenly at liberty, then time is of the essence as his original sentence was scheduled to end in or around March 2020. The issue has the possibility of becoming moot given the short time remaining on Respondent's sentence and the limited relief available to the State. As a result, the State believes this case should be expedited so that the issue involved is not possibly rendered moot solely by the passage of time.

WHEREFORE, the State asks the Court to certify this appeal for its consideration pursuant to Rule 204(b) and the significant novel legal question involved; to expedite this appeal;

---

[2] A copy of the Order is attached as Exhibit B.

and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

William M. Blitch, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 19, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
The Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case Tracking Number 2019-000570

The State of South Carolina, Appellant,

vs.

Dontavious Oneal Jones, Respondent.

INITIAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The circuit court erred in granting Respondent's request for equitable relief and refusing to remand him back to the custody of the South Carolina Department of Corrections. The court also erred in finding he has satisfied his sentence imposed as part of a guilty plea on September 1, 2016.

STATEMENT OF THE CASE

On September 1, 2016, Respondent pled guilty to possession with intent to distribute (PWID) crack cocaine, PWID marijuana third offense, domestic violence third degree, use a vehicle without owner's permission, and failure to stop for a blue light. (Plea T.4-5; R.___). As part of the plea, numerous other charges were dismissed. (Plea T. 5; R.___). He agreed and was sentenced to five years, concurrent, for the two PWID charges and time served for the remaining charges. (Plea T. 16-17; R.___). PWID marijuana third offense is a "no parole offense" under Section 24-13-100 of the South Carolina Code, which means he must serve at least eighty-five percent of his sentence prior to being released on community supervision. S.C. Code Ann. § 24-13-150.

Petitioner was released early from the custody of the South Carolina Department of Corrections (SCDC). The State sought to have him remanded to custody and he moved seeking equitable and other relief. The Honorable Daniel D. Hall conducted a hearing on the March 14, 2019. Judge Hall issued an Order Granting Relief on March 29, 2019. (Order Granting Relief; R.___). The State timely appealed the Order. This brief follows.

STATEMENT OF FACTS

On September 1, 2016, Respondent pled guilty to possession with intent to distribute (PWID) crack cocaine, PWID marijuana third offense, domestic violence third degree, use a vehicle without owner's permission, and failure to stop for a blue light. (Plea T.4-5; R.___). As part of the plea, numerous other charges were dismissed. (Plea T. 5; R.___). He agreed and was sentenced to five years, concurrent, for the two PWID charges and time served for the remaining charges. (Plea T. 16-17; R.___).

One of his charges with the PWID marijuana third offense. This offense was a "no parole offense" requiring service of at least eighty-five percent of his five-year sentence. Respondent had two prior drug related convictions one for PWID crack cocaine and another for PWID crack cocaine within proximity of a park. (T.11; R.___). As a result, he should have remained incarcerated until at least March 24, 2020. (Order Granting Relief; R.___).

However, when he was admitted to SCDC an incorrect code was entered in the system and his offense was not properly listed as an eighty-five percent "no parole offense" but was instead listed as a "regular parolable offense." (T.12; R.___). As a result, he was released on February 1, 2018. He was released to a supervision program, which he completed on August 25, 2018. (T.12; R.___). Following an audit, SCDC became aware of multiple individuals, including Respondent, being released early. (T.12; R.___). As a result, a bench warrant was issued to pick up Respondent and remand him to custody. (T.5; R.___).

Petitioner sought relief from the circuit court to find Respondent need not be remanded to complete the remainder of his sentence. SCDC officially took no position on the arguments, and the Sixteenth Circuit Solicitor's Office sought to have the original sentence enforced with credit for the time Respondent was improperly released from SCDC. (T.12-13; 15-16; R.___).

After hearing argument, the circuit court granted relief, vacated the bench warrant, and refused to remand Respondent to the custody of SCDC. The Court issued an Order Granting Relief in which the court found he would not be remanded to the custody of SCDC and had completed his sentence imposed on September 1, 2016.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Pulley, 423 S.C. 371, 376-77, 815 S.E.2d 461, 464 (2018) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). The appellate court "reviews questions of law de novo." State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (citing State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012)).

ARGUMENT

I. The circuit court erred in granting Respondent's request for equitable relief and refusing to remand him back to the custody of the South Carolina Department of Corrections. The court also erred in finding he has satisfied his sentence imposed as part of a guilty plea on September 1, 2016.

The circuit court erred in vacating the bench warrant, refusing to remand Respondent to the custody of SCDC to complete the service of his lawfully entered sentence pursuant to a negotiated guilty plea, and in finding he completed his sentence. This is a matter of first impression in South Carolina and this state should join the majority of other jurisdictions which allow for the re-incarceration of an individual incorrectly released. The circuit court committed an error of law in analyzing the re-incarceration under the analysis of U.S. v. Merritt, 478 F.Supp. 804 (D.C. 1979) and not the many other cases allowing for remand to complete a lawful sentence. Further, this Court may determine, as the majority of cases do, Respondent is entitled to credit towards his sentence for the period of time he was released, but still should find the circuit court committed an error of law in determining he could not be remanded to SCDC to complete his sentence. Finally, the circuit court clearly committed an error of law in concluding Respondent "has satisfied his sentence as imposed upon him on September 1, 2016 pursuant to Indictment 2015-GS46-3003" and in effect granting a judicial pardon of the remainder of Respondent's sentence when a pardon is a decision vested in the executive branch. See S.C. Code Ann. §24-21-901 thru 1000 (Supp. 2018).

Respondent was sentenced to five years for PWID marijuana third offense. This is a "no parole offense" under section 24-13-100 of the South Carolina Code, which means he must serve at least eighty-five percent of his sentence prior to being released on community supervision. See

S.C. Code Ann. § 24-13-150. He was given credit for 248 days. (Plea T. 16-17; R.__). As a result, he should not have been released prior to March, 2020.

The circuit court misinterpreted the holdings of several cases to find that Respondent, even though he still had time to serve remaining on his sentence, should not be remanded to custody to complete that lawfully-imposed, negotiated sentence. The circuit court committed an error of law in applying case law and analysis relevant to the question of whether someone can be required to serve their complete sentence after mistaken release, versus whether they can be required to complete a sentence—without extending the overall time of their sentence—after the mistaken release.

Historically, many courts found that a person sentenced to a term was required to serve that full term, and if released improperly, could be rearrested and required to serve the full term of their sentence. See e.g., United States ex rel. Mayer v. Loisel, 25 F.2d 300, 301 (5th Cir. 1928) (sentence did not begin until actual incarceration and six month delay in executing sentence did not constitute service of the sentence); Leonard v. Rodda, 5 App. D.C. 256, 274-75 (1895) (denying credit based on erroneous release). The Supreme Court of Louisiana explained in a case similar to the one at bar:

> The rule applicable to a case like this, **which rule is based upon the settled jurisprudence of this country** . . . as follows:
> Effect of Lapse of Time Without Serving Sentence.—The judgment is the penalty of the law, as declared by the court, while the direction with respect to the time of carrying it into effect is in the nature of an award of execution. Where the penalty is imprisonment, the sentence of the law is to be satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or some legal authority. Therefore the expiration of time without imprisonment is in no sense an execution of the sentence. Accordingly where the judgment and sentence is imprisonment for a certain term, and from any cause the time elapses without the imprisonment being endured, it will still be a valid, subsisting, unexecuted judgment. And **where a convict is permitted to**

> **absent himself from prison the time when he is absent is no part of the sentence. And therefore where a convicted defendant is at liberty and has not served his sentence, if there is no statute to the contrary, he may be rearrested as for an escape, and ordered into custody on the unexecuted judgment.** . . .

State v. Rider, 201 La. 733, 743, 10 So. 2d 601, 604 (1942) (emphasis added and citations omitted).

While this is the historical standard that was applied, very recently the Fourth Circuit has found a district court did not err in remanding a person to custody without giving credit for the time during which they were erroneously released. United States v. Grant, 862 F.3d 417, 422 (4th Cir. 2017). In Grant, the defendant was found in violation of his supervised probation and remanded to the custody of the federal marshals for fifteen days incarceration. Id. at 418. The defendant was mistakenly released eleven days early through no fault of his own. Id. at 418-419. He subsequently surrendered to federal marshals and filed a motion seeking credit for the ten days during which he was mistakenly released. Id. at 419.

The Fourth Circuit noted that other federal circuits have "recognized, at least to some degree and in some circumstances, a federal common law right to credit for time erroneously spent at liberty." Id. at 420 (citations omitted). The Court also acknowledged two almost universal standards which are "First, a prisoner may not receive credit if he had a role in creating his premature release. Second, a prisoner has a right to credit if the Government maliciously caused his premature release." Id. (citations omitted). The Fourth Circuit concluded, in balancing the various interests of the defendant and society, that under the facts of the case a denial of credit for time mistakenly released was not an abuse of discretion. Id. at 421-422; see also, Scott v. United States, 434 F.2d 11 (5th Cir. 1970) (denying credit based on the facts of the case).

In one of the seminal cases on the issue of re-incarceration after a mistaken release, the Tenth Circuit indicated: "There is no doubt of the power of the government to recommit a prisoner who is released or discharged by mistake, where his sentence would not have expired if he had remained in confinement." White v. Pearlman, 42 F.2d 788, 789 (10th Cir. 1930). In White, the defendant was sentenced to five years' imprisonment. The warden, indicating records showed White was sentenced to only three years, released White prior to completion of his original sentence. White "re-established his home, and more than two years later was advised the he was wanted." Id. at 789. He voluntarily return to be committed and sought credit for the time he was mistakenly released. Id.

After acknowledging the power to recommit a prisoner improperly released, the Court considered whether to grant credit for the time released. The warden argued that White was required to serve the full five year sentence and should be given no credit for the time released. The Court found: "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." The Court then stated: "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." Id. This is the portion quoted by the circuit court in this case. The circuit court in this case, however, failed to cite to the statement before indicating the right to recommit a person released and to the sentence following which provided the remedy: "It is our conclusion that where a prisoner is discharged from a penal institution, without any contributing fault on his part, and without violation of conditions of parole, that his sentence continues to run while he is at

liberty." Id. The Tenth Circuit never foreclosed the possibility of recommitting an erroneously released prisoner. Instead, it began with the fact he would be recommitted and then found he should be given credit for time served while on release. This is exactly the remedy argued for by the State at the hearing.

Under White, and several other cases which rely primarily on the analysis of White, Respondent would be recommitted to prison and would be given credit for the time on release. See e.g., United States v. Greenhaus, 89 F.2d 634, 635 (2d Cir. 1937) (per curiam) (Learned Hand, Augustus Hand, and Harrie Chase, JJ.) (awarding credit for period of erroneous release); Smith v. Swope, 91 F.2d 260, 262 (9th Cir. 1937) (granting credit); Hartley v. State, 279 So.2d 585, 587–588 (1973) (providing for re-incarceration and credit for time mistakenly at liberty); In re Roach, 150 Wash. 2d 29, 38, 74 P.3d 134 (2003) (providing a thorough analysis of the different court decisions and ultimately allowing re-incarceration and granting equitable relief of day-for-day credit against the prisoner's sentence for the time he was at liberty). Respondent's sentence would not be extended. He would not be serving his sentence in installments. Instead, he would serve his original sentence and would be released as originally scheduled—presumably around March 2020.

Other Courts have used different analysis in determining whether to grant or deny credit for time when the prisoner was mistakenly not serving a sentence. For example, Chief Judge Posner of the Seventh Circuit Court of Appeals explained:

> [I]f the sentence is five years and the defendant begins to serve it on July 1, 1990, the government cannot, by releasing him between January 1, 1992, and December 31, 1992, postpone the expiration of his sentence from June 30, 1995, to June 30, 1996—cannot in fact postpone it a day beyond June 30, 1995. The sentence expires on schedule even though the defendant will have served four years rather than five.

Dunne v. Keohane, 14 F.3d 335, 336 (7th Cir. 1994). The Court, however, made it clear this was only the clear rule when the government was "trying to delay the expiration of the defendant's sentence." Id. at 337. The Court found when the delay is to the commencement of a sentence, the rule need not apply. Id.

The Third Circuit Court of Appeals created its own test for determining whether to give credit for time a prisoner is mistakenly released. See Vega v. United States, 493 F.3d 310 (3d Cir. 2007). The Court began with the recognition:

> Courts adopting the rule also seem to generally agree upon the "power of the government to recommit a prisoner who is released or discharged by mistake, where his sentence would not have expired if he had remained in confinement." In other words, **a mistaken release does not prevent a government from reincarcerating a prisoner who has time to serve.** The question is whether he should be given credit against his sentence for the time he was at liberty.

Id. at 315-316 (internal citations omitted and emphasis added); see also Green v. Christiansen, 732 F.2d 1397, 1399 (9th Cir.1984) ("A ministerial mistake does not necessarily excuse Green from serving the rest of his sentence."). The Court then began to analyze the various rules and considerations to be given in determining whether to allow credit for time on mistaken release.

The Court consider whether "it is a violation of the fundamental principles of liberty and justice to require a prisoner who has been erroneously released and has begun the rehabilitation process to return to incarceration." Id. at 317. The Court explained: "Other courts have declined to find due process violations in similar circumstances. . . . We likewise decline to find a due process violation here." Id.; see also, Hawkins v. Freeman, 195 F.3d 732, 746-747 (4th Cir. 1999) (finding mere negligence on the part of the government in releasing an individual and then returning that person to prison did not cause a deprivation of the person's substantive due process rights).

The Court then recognized three important considerations: 1) fairness to the prisoner and the right to serve a continuous sentence; 2) limiting the capricious exercise of governmental power; and 3) "as important as the rights of prisoners and the need to limit the capricious exercise of governmental power is the government's and society's interest in convicted criminals serving out their sentences." Vega, 493 F.3d at 318; see also, Artez v. Mulcrone, 673 F.2d 1169, 1171 (10th Cir. 1982) ("[S]ociety has a legitimate interest in ensuring that prisoners convicted of serious crimes not be released before serving their full sentences unless they are rehabilitated.").

Ultimately, the Third Circuit crafted a rule in order for a prisoner to receive credit for time mistakenly released[1]:

> Therefore, in order for a prisoner to receive credit for time he was erroneously at liberty, the prisoner's habeas petition must contain facts that demonstrate that he has been released despite having unserved time remaining on his sentence. Once he has done this, the burden shifts to the government to prove either (1) that there was no negligence on the part of the imprisoning sovereign, or (2) that the prisoner obtained or retained his liberty through his own efforts.

Vega, 493 F.3d at 319. Other Courts have called this test into question, because the only times it would foreclose the award of credit is when release occurred through efforts of the prisoner or when there was miscommunication between sovereigns such that the releasing sovereign would not have been even merely negligent. See e.g., Grant, 862 F.3d at 421 (finding the Vega test "is too narrow to account for all the circumstances that may arise in various cases of erroneously granted liberty. . . . Due to this failure to adequately consider the multitude of interests an award of credit implicates, we decline to adopt the Vega test.").

[1] Again it is important to note, the Court started with the proposition that reincarceration was appropriate and the only question was whether or not the released prisoner should get credit for the time at liberty or whether the person should be required to serve the complete sentence incarcerated as was the historical rule.

The primary case relied upon by the circuit court is U.S. v. Merritt, 478 F.Supp. 804 (D.C. 1979). The Court recognized generally: "A convicted person will not be excused from serving his sentence merely because someone in a ministerial capacity makes a mistake with respect to its execution." Id. at 807. The Court adopted a version of the "waiver of jurisdiction" theory to find a prisoner need not be re-incarcerated and required to serve their remaining sentence—though it is important to note that the sentence would have been considered served based on the credit for time at liberty rules of White and Vega. The waiver theory first appeared in Piper v. Estelle, 485 F.2d 245 (5th Cir. 1973), in which the Fifth Circuit explained: the "action must be so affirmatively wrong or [the] inaction so grossly negligent that it would be unequivocally inconsistent with fundamental principles of liberty and justice to require [that the 'time owed'] be served. . . ." Id. at 246 (quotation omitted). Based on the facts of its case, the Merritt Court concluded: "In the judgment of this Court, a requirement that defendant serve his sentence here and now would be precisely in that category; indeed it would shock the conscience of the Court." Merritt, 478 F.Supp. at 808.

The facts of the Merritt case, however, are significantly distinguishable from the facts of the current case. In 1973, the defendant pled guilty to federal charges and was sentenced to 1 to three years imprisonment consecutive to an indeterminate sentence being served in state court in Maryland. The defendant sought multiple times to determine the status of his detainer regarding the federal sentence and was unsuccessful. Id. at 805. In August 1976, the defendant was paroled from the state institution and released. In June 1979, the defendant was arrested and began serving his federal sentence. He filed a motion seeking credit among other relief. Id. at 806. The District Court specifically noted, if the defendant was given credit for the time during which he was mistakenly released as the majority of courts do, his sentence would have been completed.

Id. at 806 n.5. Additionally, the court described the significant changes in the defendant's life since he was released including getting married, having a child, adopting another partially handicapped child, being an active member of his church, and becoming part owner and vice president of a construction company. Id. at 806.

The Court noted Merritt was released by a decision of "the competent Maryland agency" based on a finding that his incarceration was no longer required. This differs significantly from the facts of the instant case in which Respondent was released as a mechanism of time and not based on the merit of his rehabilitation. Further, the Merritt Court found:

> [A] substantial period of time has now elapsed, defendant has demonstrated exceptional adjustment and progress, and the judgment of the Maryland authorities appears to have been fully vindicated by defendant's subsequent conduct.[2] An order requiring service of defendant's sentence now would needlessly jeopardize his long-term adjustment to society, disrupt both his family and his family life, and destroy his economic base . . . .

Id. at 808. The circumstances in Merritt differ greatly from the circumstances of the instant case in which the only testimony presented was he "reunited with his family"—which may include the individual he committed domestic violence against—and he had been employed at Ross during the holidays but otherwise has not had permanent employment. (T.5; R.___).

The State submits the circuit court erred in adopting the "waiver of jurisdiction" rule set out in Piper and Merritt which appears to be the minority rule, or a rule used only in cases with exceptional facts and circumstances. Instead, the court should have followed the rule of either the Fourth Circuit in Grant or what appears to be the majority rule found in White which allows for re-incarceration but provides for credit for time spent at liberty. The State asks this Court to

[2] The Court specifically noted: "Letters from friends and neighbors in his community use such phrases as 'conscientious', 'respectful', 'asset to the community', 'aware of his moral and Christian duties', and 'upright in all of his business and personal dealings'. Defendant is apparently engaged in an active prison ministry, visiting with prisoners, supplying them with religious materials, and generally attempting to assist in their rehabilitation." Merritt, 478 F.Supp. 808 n.12. Nothing similar has been presented on the record in this case.

adopt the more reasonable test of White or Grant because there are important interests on both sides which need to be considered. Fairness to the prisoner needs to be juxtaposed with the interest of society and the people of the State to insure a lawfully entered—and in this case properly negotiated—sentence is carried out. Allowing for remand for incarceration to complete the sentence with a judicial determination of whether the individual should receive credit for time at liberty complies with and properly balances all the interests involved.

Even if this Court were to conclude the waiver rule was an appropriate rule to follow, the facts in this case and glaringly insufficient to justify its application in this case. There was no significant delay such that the government could be considered grossly negligent in releasing and failing to remand Respondent. Further, he has not shown the exceptional adjustment and progress shown in those case which find fundamental principles of liberty and justice require a person to not be re-incarcerated to serve the remainder of their lawfully entered sentence.

Additionally, the circuit court in this case committed a clear error of law in concluding Respondent "has satisfied his sentence as imposed upon him on September 1, 2016 pursuant to Indictment 2015-GS46-3003" and in effect granting a judicial pardon or judicial clemency of the remainder of Respondent's sentence. A pardon is a decision vested in the executive branch. See S.C. Code Ann. §24-21-901 thru 1000 (Supp. 2018). Because the circuit court's order has the effect of granting a judicial pardon or judicial clemency in reducing the lawfully entered and negotiated sentence, the court committed a clear error of law.

This Court should find the original sentence of Respondent to remain in place, provide for Respondent's re-incarceration to complete service of his sentence, and make a determination of his right to credit for time mistakenly at liberty. The State asks this Court to Reverse the decision of the circuit court and remand Respondent to the custody of the Department of

Corrections for service of the remainder of his sentence with any credit provided by the Court for the time he was mistakenly at liberty.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court granting Respondent relief, refusing to remand him to the custody of the South Carolina Department of Corrections, and finding his lawfully entered sentence is deemed completed should be reversed and Respondent should be remanded to custody of the South Carolina Department of Corrections to serve the remainder of his sentence with credit for time at liberty based on the determination of this Court.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

July 18, 2019

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF YORK South Carolina Department of Corrections, Vs. Dontavius Oneal Jones Defendant.	)))))))))	COURT OF GENERAL SESSIONS Indictment: 2015GS463003 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.

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

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County
The Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case Tracking Number 2019-000570

The State of South Carolina, Appellant,

vs.

Dontavious Oneal Jones, Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Motion to Certify Appeal to the South Carolina Supreme Court on Appellant by having a copy delivered to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense,
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 19th day of July, 2019.

CAROLINE COLLINS
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

July 19, 2019

HAND-DELIVERY
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Dontavious Oneal Jones
Appellate Case Tracking No. 2019-000570

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of a Motion to Certify and Expedite Appeal to the South Carolina Supreme Court along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General

Enclosures
cc: Robert M. Dudek, Esquire
Jenny A. Kitchings, Clerk Court of Appeals
Victim Advocacy Division