

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
**Dec 31 2020**  
**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

LUTHER BRIAN MARCUS,

APPELLANT

APPELLATE CASE NO 2017-002622

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 2020 – UP - 338

PETITION FOR REHEARING

On December 16, 2020, this Court affirmed Appellant’s conviction and sentence. State v. Marcus, Op. No. 2020-UP-338, 2020 WL 7385297 (Filed December 16, 2020). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests that this Court rehear the matter due to points overlooked and/or misapprehended by this Court.

This Court incorrectly held that the record showed the lower court believed it had the discretion to determine whether to revoke Appellant’s probationary sentence in part or in full and exercised that discretion when it sentenced Appellant. Instead the exchange between Appellant and the lower court showed the lower court believed the determination of Appellant’s sentence

was “outside its jurisdiction” and it could only revoke his probationary sentence in full. R. 5, l. 11 – 7, l. 25.

During Appellant’s probation revocation hearing defense counsel showed Appellant served an additional eleven months’ imprisonment and he was entitled to receive that time served credit towards his remaining sentence. R. 5, l. 11 – 7, l. 23. Defense counsel argued that should be taken into account, under the lower court’s discretion, when determining whether to revoke Appellant’s probationary sentence in part or in full. Id. Tellingly, the fact that the lower court did not rule on defense counsel’s argument for Appellant’s time served credit showed that the court did not exercise its discretion over Appellant’s sentence, but rather believed it was bound to revoke Appellant’s probationary sentence in full. R. 8, ll. 23.

The record contains multiple statements that show the lower court did not believe it had the authority to do anything other than revoke Appellant’s probation in full. After defense counsel articulated his entire argument on the time served issue and how it should impact Appellant’s probationary sentence, the court responded that it was “all not in my jurisdiction, as you are aware.” R. 7, ll. 24 – 25. Appellant explained the time served issue in his own words as well, and the court responded “you understand that’s not up to me.” R. 8, ll. 23. Moreover, the lower court did not state “on what basis the discretion was exercised” as required by State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). Accordingly, this Court misapprehended the facts in the record which show that the lower court abused its discretion by failing to exercise its discretion to determine whether to revoke Appellant’s probation in full, in part, or if revocation was proper at all, and this case should be reheard on that ground.

Respectfully Submitted,

s/ Victor R. Seeger

VICTOR R SEEGER  
Appellate Defender

This 31st day of December, 2020.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Thomas Wells Nicholson, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Luther Brian Marcus, #218408, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 31st day of December, 2020.

s/ Victor R. Seeger  
Victor R Seeger  
Appellate Defender  
ATTORNEY FOR APPELLANT



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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**Robert M. Dudek, Chief Appellate Defender**  
**Wanda H. Carter, Deputy Chief Appellate Defender**

December 31, 2020

Thomas Wells Nicholson, Esquire  
General Counsel  
S.C.P.P.P.S.  
Post Office Box 207  
Columbia, SC 29202

**VIA EMAIL ONLY**

Re: The State v. Luther Brian Marcus

Dear Mr. Buchanan:

Enclosed is an electronic copy of the Petition for Rehearing in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

s/ Victor R. Seeger  
Victor R Seeger  
Appellate Defender

VRS/cws

Enclosure

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**Robert M. Dudek, Chief Appellate Defender**  
**Wanda H. Carter, Deputy Chief Appellate Defender**

December 31, 2020

Mr. Luther Brian Marcus, #218408  
Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Marcus:

Enclosed is a copy of the Petition for Rehearing that I filed today on your behalf in the South Carolina Court of Appeals. Feel free to contact me if you have any questions.

Please contact me if you have any questions.

Sincerely,

s/ Victor R. Seeger  
Victor R Seeger  
Appellate Defender

VRS/cws

Enclosure

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