

**RECEIVED**

**Dec 03 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Dorchester County  
Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2020-001397  
\_\_\_\_\_

The State,

Respondent,

vs.

James Winston Almond,

Appellant.  
\_\_\_\_\_

**RETURN TO MOTION TO STRIKE AND  
MOTION TO AMEND DESIGNATION OF MATTER**  
\_\_\_\_\_

Appellant would respectfully show unto this Court as follows:

The State filed its Initial Brief of Appellant on November 17, 2021. Counsel for Appellant served his Motion to Strike asking this Court to strike several statements from the State's argument relating to Appellant's release from confinement.

On appeal, Appellant raises the issue that the trial judge erred in admitting Appellant's prior conviction for armed robbery. Specifically, Appellant writes "The State did not offer any proof that the armed robbery conviction was within the time limit set out in Rule 609(b), SCRE. Solicitor Sorenson simply speculated that within the sentence Appellant received he 'would have just gotten off of any kind of supervision within the last, you know five years or so of that.'"

Appellant has the burden of showing error and not just speculation of possible error. While the solicitor did not provide a specific date, the defendant (who should know for certain when he was released from incarceration) never challenged or contradicted the statement or its

implication at trial. The State is merely seeking to eliminate the speculation. Further, the Court doesn't reverse for possible error, only for demonstrated error. Therefore, when the Court can verify the exact date with readily accessible and verifiable information, it should not reverse a trial judge when Appellant does not provide evidence to the contrary of what was relied on at trial.

Attached to this return is Exhibit A, a certified copy of Verification of Incarceration Dates for the Appellant provided by the Department of Corrections, which confirms that Appellant was released within the ten-year time frame. Notably, that documentation was certified as true by a records officer for the Department of Corrections and therefore, is self-authenticating under the South Carolina Rules of Evidence. See Rule 902(4), SCRE (instructing “[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ...[a] copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1), (2), or (3) of this rule or complying with any statute or rule promulgated by the Supreme Court”). The State also requests to amend its designation of matter to include Exhibit A to this Return, A copy of the Amended Designation of Matter is also attached to this return.

Rule 201 SCRE allows a Court to take judicial notice. Rule 201(c), SCRE. “A judicially noticed fact must be one not be subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule

201(b), SCRE. Further, Rule 201(f) states that judicial notice may be taken at any stage of the proceeding. Rule 201(f), SCRE.

Appellant is seeking for this Court to strike information relating to ultimate the issue of his appeal of whether or not Appellant was released from custody within the ten year time frame of Rule 609(b), SCRE. As a result, information related to the release date of Appellant is critical to the proper resolution of his appeal. Therefore, the State is asking the Court to take judicial notice of the date Appellant was released from confinement by providing this Court with a certified copy of this information. (Exhibit A attached) If the Court takes judicial notice of the incarceration dates of Appellant, the motion to strike would be rendered moot.

WHEREFORE, Respondent asks this Court to deny Appellant's Motion to Strike and to allow the State to amend the designation of matter. The State requests that pursuant to Rule 201 of the SCRE, judicial notice be taken that Appellant was released from confinement on December 31, 2015, falling within the ten year time frame of Rule 609(b), SCRE. As a result, the State believes it unnecessary to strike any statement from its brief.

Respectfully submitted,

ALAN WILSON  
Attorney General

AMBREE M. MULLER  
Assistant Attorney General

By: 

Ambree M. Muller  
Assistant Attorney General  
S.C. Bar No. 104213

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Columbia, SC 29211

(803) 734-3747

ATTORNEYS FOR RESPONDENT

December 3, 2021

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
**Division of Classification and Inmate Records**

**To:** Ambree, Muller

**From:** Franshon Dennis

**Subject:** VERIFICATION OF INCARCERATION DATES

**Date:** 12/1/2021

This is to verify that Almond, James, SCDC # 323232 was incarcerated in the South Carolina Department of Corrections from 08/02/2007-12/31/2015.

**Type of Release**

Maxout

Parole

Community Supervision

Supervised Re-entry

Probation

Intensive Supervision

YOA Parole Conditional

YOA-Term Satisfied

Detainer Pick Up

**CERTIFIED TRUE COPY**  
*Franshon Dennis*  
**Records Officer, S. C. Dept. of Corr.**  
**Date** 12-1-2021

*Franshon Dennis*

South Carolina Department of Corrections  
Inmate Records Office  
P.O. Box 21787  
Columbia, SC 29221  
803.896.1998

Exhibit A

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The State,

Respondent,

vs.

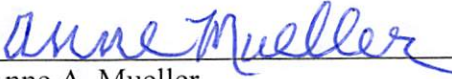
James Winston Almond,

Appellant.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Anne Mueller, certify I served a true copy of the State's Return to Motion to Strike and Motion To Amend Designation Of Matter and the Amended Designation of Matter on Appellant by serving it on Jessica M. Saxon, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.  
This 3<sup>rd</sup> day of December, 2021.

  
\_\_\_\_\_  
Anne A. Mueller  
Legal Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-374