

RECEIVED

APR 08 2022

S.C. SUPREME COURT

THE SUPREME COURT OF SOUTH CAROLINA

NOTICE OF APPEAL TO SOUTH CAROLINA SUPREME COURT  
FROM GREENVILLE CIRCUIT COURT  
HONORABLE JUDGE LETITIAH VERDINE

STATE OF SOUTH CAROLINA \_\_\_\_\_ RESPONDENT  
Troy Luke Burks \_\_\_\_\_ v. \_\_\_\_\_  
APPELLANT

CASE NO# 2018-CP-23-3312, 2021-CP-23-3840

MOTION FOR RECONSIDERATION FOR A MOTION FOR EMERGENCY  
COMPASSIONATE RELEASE UNDER 18-USC 3582(C)(1)(A) AS  
AMENDED BY THE FIRST STEP ACT OF 2018 Pub. L. NO 115-391  
§§ 603(b)(1) 132 STAT 5194 5239 UNDER A EXTRAORDINARY  
AND COMPELLING REASONS DUE TO COVID-19 PANDEMIC CRI-  
SIS.

NOTICE IS HEREBY GIVEN Troy L. Burks does hereby appeal  
the return, motion to dismiss, and motion to merger dated  
23<sup>rd</sup> day of MARCH, 2022 and received by the APPELLANT  
ON APRIL 1, 2022. I CAN NOT ENCLOSE A COPY OF THE COURTS ORDER  
AT THIS TIME BECAUSE WE THE INMATES AT WEBER CORR. INST. ARE  
PLACED ON QUARANTINE AND DENIED ACCESS TO LAW LIBRARY AND COPY  
MACHINE.

THE APPELLANT HAS EXTRAORDINARY AND COMPELLING REASONS  
FOR A SENTENCE REDUCTION AND EMERGENCY COMPASSIONATE RE-  
LEASE. HE IS 70 YEARS OLD, HAS SERVED OVER 30 YEARS IN PRISON  
AND DETERMINATION SHOULD BE MADE BY THE DIRECTOR OF THE  
BUREAU OF PRISON THAT THE APPELLANT IS NOT A DANGER TO THE  
SAFETY OF ANY OTHER PERSON OR THE COMMUNITY AS PROVIDED  
UNDER 18 USCS 3142 AND SUCH REDUCTION IS CONSISTENT  
WITH APPLICABLE POLICY STATEMENT ISSUED BY THE SENTEN-  
CING COMMISSIONS RULE 35 IRC P.

THE APPELLANT HAS A MODERATE ASTHMA THAT IS CHRONIC  
AND THE VIRUS WILL LIKELY SPREAD THE ILLNESS BECAUSE THE FACI-  
LITY CAN NOT CONTROL THE RISK OF EXPOSURE. MORE SO, COMPELLING

AND EXTRAORDINARY REASON FOR GRANTING A SENTENCE REDUCTION RESTS ON (3) THREE CONSIDERATION OF STATUTORY SENTENCING GUIDELINES: THE 1<sup>ST</sup> FACTOR IS A BILL TO AMEND SECTIONS 16-3-910 CODE OF LAWS OF SOUTH CAROLINA 1976, RELATING TO THE OFFENSE OF KIDNAPPING, SO AS TO PROVIDE A PERSON CONVICTED OF KIDNAPPING BEFORE JUNE 5, 1991 AND SENTENCED TO LIFE SENTENCE MAY HAVE THEIR SENTENCE REDUCED TO (30) THIRTY YEARS, THE MAX SENTENCE GUIDELINE FOR KIDNAPPING. 2<sup>ND</sup> FACTOR, IS BILL H. 3322 TO AMEND SECTIONS 17-25-322 CODE OF LAWS OF SOUTH CAROLINA 1976, RELATING TO RESTITUTION TO CRIME VICTIMS AND BY ADDING ARTICLE 2 TO CHAPTER 27 TITLE 24 SO AS TO PROVIDE THE CIRCUMSTANCES FOR WHICH AN INMATE WHO HAS BEEN INCARCERATED AT LEAST FIFTEEN YEARS MAY PETITION THE COURT TO HAVE HIS SENTENCE MODIFIED; TO AMEND SECTION 24-13-150 RELATING TO THE EARLY RELEASE OF AN INMATE, SO AS TO REDUCE THE PERCENTAGE OF TIME A INMATE WHO HAS COMMITTED A "NO PAROLE OFFENSE" MUST SERVE BEFORE HE MAY BE ELIGIBLE FOR EARLY RELEASE, DISCHARGE OR COMMUNITY SUPERVISION FROM EIGHTY-FIVE PERCENT ~~TO~~ SIXTY-FIVE PERCENT AND TO PROVIDE A PROCEDURE THAT ALLOWS CERTAIN INMATES TO PETITION THE COURT TO MODIFY THEIR SENTENCE. 3<sup>RD</sup> FACTOR IS THE FEDERAL STATUTE 18-U.S. 3582 (C) (2) AUTHORIZES SENTENCE REDUCTION IN CERTAIN INSTANCES AFTER U.S. SENTENCING COMMISSION HAS MADE A RETROACTIVE REDUCTION IN A GUIDELINE RANGE. THE COURT STATES THAT THE POLICY CALLS FOR A COMPARISON BETWEEN THE APPELLANTS ORIGINAL SENTENCE AND THE RANGE PROVIDED BY THE GUIDELINES TO CONSIDER THE DEFENDANTS FIRST SENTENCE AS A COMPARISON FOR THE SENTENCE UNDER THE AMENDED GUIDELINES WOULD BE ILLOGICAL WHEN THE DEFENDANT

IS SERVING A ENTIRELY DIFFERENT SENTENCE.

THE FOURTH CIRCUIT ALSO TOOK A POSITION IN THE CIRCUIT COURT SPLIT OVER THE AVAILABILITY OF SECTION 3582(C)(2) REDUCTION FOR DEFENDANTS WHO QUALIFIED AS CAREER OFFENDERS BUT WHO WERE GRANTED OVER REPRESENTATION DEPARTURE AT THEIR ORIGINAL SENTENCINGS. SEE: U.S. V. MUNN, 86 CR 614 (4th circuit 210).

NOTWITHSTANDING THE APPELLANT HAS BEEN DIAGNOSED WITH SEVERAL CARDIO-VASCULAR CONDITIONS, THIS MEDICAL CONDITION PLACES HIM IN ELEVATED RISK OF BECOMING SERIOUSLY ILL OR DYING FROM COVID-19 AND COMBINED WITH VIRUS SPREADING THROUGH THIS WIEBER CORR. INST. FACILITY PRESENT THE TYPE OF EXTRA ORDINARY AND COMPELLING REASON NECESSARY FOR A SENTENCE REDUCTION, COVID-19 RAISES MEDICAL ISSUES IN THE PRISON CONTEXT THAT ARE PARTICULARLY SERIOUS, IS HIGHLY COMMUNICABLE AND IS AGGRAVATED BY CERTAIN OTHER MEDICAL CONDITIONS CAN BE LETHAL.

APRIL 3, 2022

Other Counsel of Record  
HONORABLE JUDGE LETITIA H. VERDIN  
Circuit Court  
305 E. NORTH ST., STE 318  
GREENVILLE, SC 29601

S.C. ATTORNEY GENERAL: ALAN WILSON  
P.O. Box 11549  
COLUMBIA, SC 29211

Troy L. Burks  
TROY L. BURKS  
WIEBER CORR. INST.  
RIDGEVILLE, SC  
29477