

APPENDIX A

FILED: July 23, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6289
(2:99-cr-00362-DCN-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ARTHUR F. JONES, a/k/a Arthur Palmer, a/k/a June, a/k/a Junior

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

7/29/2021

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-6289

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARTHUR F. JONES, a/k/a Arthur Palmer, a/k/a June, a/k/a Junior,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Charleston. David C. Norton, District Judge. (2:99-cr-00362-DCN-1)

Submitted: July 20, 2021

Decided: July 23, 2021

Before WILKINSON, AGEE, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Arthur F. Jones, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Arthur F. Jones seeks to appeal the district court's order construing his petition for a writ of audita querela as a 28 U.S.C. § 2255 motion and dismissing it as successive and unauthorized. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Jones has not made the requisite showing. Accordingly, we deny Jones' motion for a certificate of appealability and dismiss the appeal. We further deny Jones' motions to dismiss the indictment, to expedite, and for judicial notice. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ARTHUR JONES, JR.,)
Petitioner,) No. 2:99-cv-0362-DCN
vs.) ORDER
THE UNITED STATES OF AMERICA,)
Respondent.)

This matter is before the court on petitioner Arthur Jones, Jr.'s ("Jones") petition for writ of audita querela, ECF No. 145, and motion to expedite proceedings, ECF No. 150. For the reasons set forth below, the court dismisses the petition for writ and finds the motion to expedite moot.

I. BACKGROUND

On April 14, 1999, Jones was indicted by the federal grand jury for Hobbs Act Robbery, during which he shot and killed a man, and use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C §§ 1951, 924(c) and 924(j). ECF No. 1. Jones was arrested and ordered detained on April 29, 1999. ECF No. 5. On November 3, 1999, after a three-day trial, a jury returned a guilty verdict on both charged counts. ECF No. 75. On March 8, 2000, the court sentenced Jones to a 20-year term of incarceration as to Count One and life as to Count Two. ECF No. 83. Jones filed a notice of appeal on March 13, 2000. ECF No. 84. On November 17, 2000, the Fourth Circuit affirmed Jones's conviction and sentence. United States v. Jones, 238 F.3d 416 (4th Cir. 2000).

Jones has filed a number of post-convictions motions seeking relief prior to his filing of the instant motions. Currently pending are Jones's petition for "writ of audita querla," ECF No. 149, and motion to expedite proceedings, ECF No. 150. On September 13, 2017, Jones filed a petition for writ of audita querla. ECF No. 149. When the government failed to respond to the petition, Jones filed a motion to expedite proceedings on November 24, 2020. ECF No. 150. On January 26, 2021, the government responded to both motions. ECF No. 153.

II. STANDARD

Federal district courts are charged with liberally construing petitions filed by pro se litigants to allow the development of a potentially meritorious case. See Hughes v. Rowe, 449 U.S. 9-10 (1980). Pro se petitions are therefore held to a less stringent standard than those drafted by attorneys. See Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). Liberal construction, however, does not mean that a court may ignore a clear failure in the pleading to allege facts that set forth a cognizable claim. See Weller v. Dep't of Soc. Servs., 901 F.3d 387, 390-91 (4th Cir. 1990).

III. DISCUSSION

As an initial matter, the court must determine the nature of Jones's request. The government argues that although Jones has styled his petition as a "Writ of Audita Querla," ECF No. 150 at 1, and alternatively as a "Motion Under Federal Rule of Civil Procedure 60(d)(3) To Set Aside Judgment," ECF No. 146 at 1, it is substantively a petition for relief under 28 U.S.C. § 2255. Indeed, the law is clear that "[r]egardless of the label assigned by the litigant, the subject matter of the motion determines its status."

Calderon v. Thompson, 523 U.S. 538, 553 (1998); see also Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004) (“Call it a motion for a new trial, arrest of judgment, coram nobis, audita querela certiorari, capias, habeas corpus, ejectment, quare impedit . . . or an application for a Get–Out–of–Jail–Card; the name makes no difference. It is substance that controls.”).

Pursuant to 28 U.S.C. § 2255(a):

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Like the petition in Melton, Jones’s request that “this Court []set aside its judgment,” ECF No. 145 at 20, “fits comfortably within [§ 2255’s] coverage.” Melton, 359 F.3d at 857. Jones’s petition asks the court to vacate its judgment based on various fraudulent acts by the prosecutors of his case. Because his motion “attacks the legitimacy” of his conviction, it is a petition for relief under § 2255, not a Rule 60 motion or a petition for writ of audita querela. Cooper v. United States, 2020 WL 4194649, at *3 (D.S.C. July 21, 2020); see also United States v. McRae, 793 F.3d 392, 397 (4th Cir. 2015) (distinguishing a § 2255 petition from a motion under Fed. R. Civ. P. 60(b)).

Moreover, a writ of audita querela is not a remedy available to Jones. Where a defendant’s challenge to his conviction or sentence could have been challenged pursuant to a § 2255 petition, “a writ of audita querela is not an available remedy[.]” United States v. Padilla, 478 F. Supp. 2d 865, 868 (E.D. Va. 2007). That is the case even where a “particular prisoner was or would be unable to obtain relief under § 2255 because of a

procedural bar.” Id. (quoting Sloan v. United States, 2006 U.S. Dist. LEXIS 90006 at *3 (W.D. Va. Dec. 13, 2006)). Where a prisoner files a petition for writ of audita querela requesting a remedy contemplated by § 2255, “it is appropriate to construe the petitioner’s motion as a motion under § 2255.” Id. at 868. As such, the court construes Jones petition as a motion for relief pursuant to § 2255.

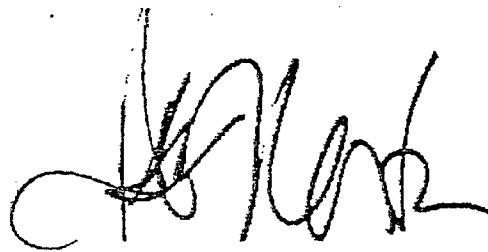
The government argues that because Jones’s request is, in character, a § 2255 petition, and because Jones has unsuccessfully petitioned this court under § 2255 in the past, the court must dismiss the instant petition as a successive § 2255 petition. In the absence of pre-filing authorization from a court of appeals, the district court lacks jurisdiction to consider a successive § 2255 motion. Winestock, 340 F.3d at 208 (4th Cir. 2003). A motion is successive if it was preceded by a § 2255 motion that was dismissed on the merits. Slack v. McDaniel, 529 U.S. 473, 489 (2000). Here, Jones has already filed at least one § 2255 petition, ECF No. 110, which this court dismissed on the merits, ECF No. 118. Jones has not received authorization from the Fourth Circuit to file a successive petition. Therefore, the court is without jurisdiction to consider Jones’s petition and must dismiss it. Accordingly, Jones’s motion to expedite the court’s resolution of his petition is moot.

Rule 11(a) of the Rules Governing § 2255 Proceedings provides that the district court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). An applicant satisfies this standard by establishing that reasonable jurists would find that the district court’s assessment of the constitutional claims is debatable or wrong and that any

dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003). Here, Jones does not meet this standard because there is nothing debatable about the court’s resolution of his § 2255 petition.

IV. CONCLUSION

For the foregoing reasons the court **DENIES** Jones’s petition and **FINDS AS MOOT** Jones’s motion to expedite. A certificate of appealability is **DENIED**.
AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

January 29, 2021
Charleston, South Carolina

UNITED STATES DISTRICT COURT
for the
District of South Carolina

Arthur Jones, Jr.)
Petitioner)
v.) Civil Action No. 2:99-cr-362-DCN
United States of America)
Respondent)

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

the petitioner (name) _____ recover from the respondent (name) _____ the amount of _____ dollars (\$_____), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

the petitioner recover nothing, the action be dismissed on the merits, and the respondent (name) _____ recover costs from the petitioner (name) _____.

other: the Court DENIES Jones's petition and finds as MOOT Jones's motion to expedite. A certificate of appealability is DENIED.

This action was (check one):

tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Honorable David C. Norton.

Date: February 1, 2021

CLERK OF COURT

s/C. Murray

Signature of Clerk or Deputy Clerk

APPENDIX C

FILED: September 27, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6289
(2:99-cr-00362-DCN-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ARTHUR F. JONES, a/k/a Arthur Palmer, a/k/a June, a/k/a Junior

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Agee, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: October 5, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6289
(2:99-cr-00362-DCN-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ARTHUR F. JONES, a/k/a Arthur Palmer, a/k/a June, a/k/a Junior

Defendant - Appellant

M A N D A T E

The judgment of this court, entered July 23, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

7101007

ARREST WARRANT

F- 452117

STATE OF SOUTH CAROLINA

 County/ Municipality of CLARENDON COUNTYTHE STATE
against

JONES, ARTHUR

Address: AT 21 BOX 608

SAVANNAH, SC 29148

Phone: None SSN: 000-00-0000

Sex: M Race: B Height: 507" Weight: 103

DL State: SC DL#: 007468356

DOB: 6-27-78 Agency ORI#: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

Offense: MURDER-VIO CS 16-3-10 SC CODE OF LAWS

Offense Code: 116

Code/Ordinance Sec. 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant JONES, ARTHUR

on 2-11-97

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
CLARENDON COUNTY SHERIFF'S OFFICE
FEDERAL BLD
P.O. BOX 371
MANNING, SC 29102

STATE OF SOUTH CAROLINA)

 County/ Municipality of CLARENDON COUNTY)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

*CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
CLARENDON COUNTY*

1/11/97 personally appeared before me the affiant BRADHAM, JM CHIEF DEPUTY who being duly sworn deposes and says that defendant JONES, ARTHUR did within this county and state on 01/14/97 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CLARENDON) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER-VIO CS 16-3-10 SC CODE OF LAWS

16-03-0010

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 1-14-97 AT APPROX 3 AM THE DEFENDANT DID, WITH MALICE AFORETHOUGHT, SHOOT AND KILL ONE LEROY ROBINSON, A CLERK AT THE N SANTEE TRUCK STOP IN CLARENDON CO, SC. THIS OFFENSE OCCURRED WHEN THE DEFENDANT AND A CO-DEFENDANT WENT TO THIS PLACE OF BUSINESS ARMED WITH A 38 CALIBRE PISTOL. PROBABLE CAUSE BASED ON INVESTIGATION OF SLED AGENT CHESTER MCFADDEN, INV. HANK RICHARDSON AND STATEMENTS OF ANTHONY PEARSON AND STEVE PROFFIT AND FORENSIC EVIDENCE FROM SLED. CUSTOMERS AT THIS TRUCK STOP CORROBORATED STATEMENT OF PEARSON & PROFFIT REGARDING CLOTHING WORN BY DEFENDANT AND VEHICLE DEFENDANT USED.

Sworn to and subscribed before me
on FEBRUARY 11, 1997

Signature of Issuing Judge

E. J. M. Bradham

Signature of Affiant

Affiant's Address CLARENDON CO SHERIFF DEPT
MANNING, SC 29102Affiant's Telephone 803 435-4414

STATE OF SOUTH CAROLINA)

 County/ Municipality of CLARENDON)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01/14/97 defendant JONES, ARTHUR did violate the criminal laws of the State of South Carolina (or ordinance of

 County/ Municipality of CLARENDON) as set forth below:

DESCRIPTION OF OFFENSE: MURDER-VIO CS 16-3-10 SC CODE OF LAWS

16-03-0010

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Judge's Address P. O. BOX 371MANNING, SC 29102Judge's Telephone 803 435-2670Issuing Court: Magistrate Municipal Circuit

ANNELE POWELL

ORIGINAL

EXHIBIT A-2

7/16/90

ARREST WARRANT

F- 452117

STATE OF SOUTH CAROLINA

 County/ Municipality of
CLARENDON COUNTYTHE STATE
against

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 CLARENDON COUNTY)
 CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 OF CLARENDON COUNTY

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 July 26, 1990
 SCCA 518

JONES, ARTHUR
 Address: AT 21 BOX 608
 SAVANNAH, SC 29148
 Phone: 904-6 SSN: 000-0000
 Sex: M Race: B Height: 5'07" Weight: 163
 DL State: SC DL #: 007468356
 DOB: 6-27-78 Agency ORI #: _____
 Prosecuting Agency: _____
 Prosecuting Officer: _____
 Offense: MURDER-VIO CS 16-3-10 SC CODE
 OF LAWS Offense Code: 116
 Code/Ordinance Sec. 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

(L.S.)
 Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant JONES, ARTHUR

on 2-11-97

Sgt. Hank Richardson
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 CLARENDON COUNTY SHERIFF'S OFFICE
 FEDERAL BLD
 P.O. BOX 371
 MANNING, SC 29102

Sworn to and subscribed before me)
 on FEBRUARY 11, 1997)
 (L.S.)

Signature of Issuing Judge

C. M. Richardson

Signature of Affiant
 Affiant's Address CLARENDON CO SHERIFF DEPT
 MANNING, SC 29102
 Affiant's Telephone 803 435-4414

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 CLARENDON)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 01/14/97
 defendant JONES, ARTHUR

did violate the criminal laws of the State of South Carolina (or ordinance of

 County/ Municipality of CLARENDON) as set forth below:

DESCRIPTION OF OFFENSE: MURDER-VIO CS 16-3-10 SC CODE OF LAWS
 16-03-0010

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution or as soon thereafter as is practicable.

(L.S.)
 Signature of Issuing Judge
 Judge Code: 292
 ANNELLE POWELL

Judge's Address P.O. BOX 371

MANNING, SC 29102

803 435-2670

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

EXHIBIT A-2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

APR 14 1999
LARRY W. PROPES, CLERK
CHARLESTON, SC

UNITED STATES OF AMERICA) CR. NO. 2:99-362
vs.) 18 USC § 1951
) 18 USC § 924(c) (1)
) 18 USC § 924(j)
ARTHUR JONES) 18 USC § 2
a/k/a Arthur Palmer)
a/k/a Junior)
a/k/a June)
KEVIN JOHNSON)

INDICTMENT

COUNT 1

THE GRAND JURY CHARGES:

1. At all times material to this Indictment the Lake Marion Truck Stop, Route Two, Exit 102-East Interstate 95, Summerton, South Carolina, was engaged in the sale of various goods and services in interstate commerce and was an industry which affected interstate commerce.

2. On or about January 14, 1997, in the District of South Carolina, the defendants, ARTHUR JONES, a/k/a Arthur Palmer, a/k/a Junior, a/k/a June, and KEVIN JOHNSON, did unlawfully, knowingly and willfully obstruct, delay and affect commerce and did attempt to obstruct, delay and affect commerce by robbery, to-wit: the defendants did take and obtain personal property, namely, United States Currency and other property from the person and presence of employees of the Lake Marion Truck Stop, Route Two, Exit 102-East at Interstate 95, Summerton, South Carolina, against their will, by

EXHIBIT C-1

means of actual and threatened violence, force, and fear of injury to their persons.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT 2

THE GRAND JURY FURTHER CHARGES:

That on or about January 14, 1997, in the District of South Carolina, the defendants, ARTHUR JONES, a/k/a Arthur Palmer, a/k/a Junior, a/k/a June, and KEVIN JOHNSON, did knowingly use and carry a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to-wit: the robbery of the Lake Marion Truck Stop, Route Two, Exit 102-East at Interstate 95, Summerton, South Carolina, (as set forth in Count One of this Indictment which is realleged and incorporated by reference herein), in violation of Title 18, United States Code, Section 924(c)(1), and in the course of this violation caused the death of a person through the use of a firearm, which killing is a murder (as defined in Title 18, United States Code Section 1111), in that the defendants, ARTHUR JONES, a/k/a Arthur Palmer, a/k/a Junior, a/k/a June, and KEVIN JOHNSON, with malice aforethought, did unlawfully kill Leroy Robinson by shooting him with the firearm willfully, deliberately, maliciously, with premeditation, and in

the perpetration of and attempted perpetration of the robbery, and did aid and abet each other in so doing.

All in violation of Title 18, United States Code Sections 924(c), 924(j) and 2.

A True Bill

FOREMAN

b7c
b7c

/s/ J. René Josey
J. RENÉ JOSEY (saw)
United States Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

APR 14 1999

LARRY W. PROPS, CLERK
CHARLESTON, SC

UNITED STATES OF AMERICA

CRIMINAL NO.: 2:99-362

vs.

WRIT OF HABEAS CORPUS

ARTHUR JONES

AD PROSEQUENDUM

a/k/a "Arthur Palmer"

a/k/a "Junior"

a/k/a "June"

It appears that criminal charges have been filed against the defendant in the above entitled case. It further appears that the defendant, ARTHUR JONES, date of birth 6/27/78, is presently in the custody of the Clarendon County Sheriff's Department. It is therefore

ORDERED that Warden, or his authorized representative, deliver ARTHUR JONES to the United States Marshals Service from time to time as the defendant may be needed until the within action is concluded in its entirety. It is further

ORDERED that the United States Marshals Service shall produce the defendant at such time and place as may be designated by the Court for proceedings in this case and upon the conclusion of this case, the said Marshal shall return the defendant to his aforesaid place of confinement.


UNITED STATES MAGISTRATE JUDGE

Charleston, SC

April 14, 1999.

ON MOTION OF:

J. RENÉ JOSEY
UNITED STATES ATTORNEY

BY:

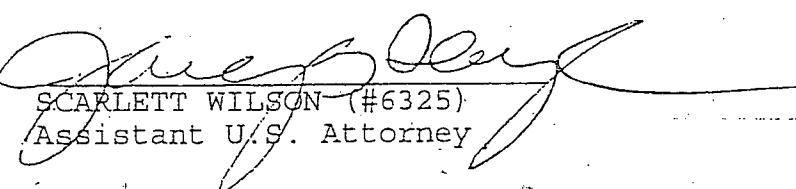

SCARLETT WILSON (#6325)
Assistant U.S. Attorney

EXHIBIT D-1

U.S. Department of Justice
United States Marshals Service
P.O. Box 1774
Columbia, SC 29233-0002-252-0066



DETAINER AGAINST UNSENTENCED PRISONER

UNITED STATES MARSHAL

DISTRICT OF SC

Please type or print neatly:

TO: Clarendon County Jail
320 East Boyce Street
Manning, SC 29102

DATE: 4/21/99
SUBJECT: Jones, Arthur....B/M
AKA: Jones, Arthur Jr.
DOB/SSN: 6/27/78..249-39-4814
USMS #:
CR #: 2:99-362

Please accept this Detainer against the above-named subject who is an unsentenced prisoner currently in your custody. The United States District Court for the _____ District of SC has issued an arrest warrant(s) charging the subject with the commission of the following offense(s):

Murder
Robbery
Firearms Violation

Prior to the subject's release from your custody, please notify this office at once so that we may assume custody if necessary. If the subject is transferred from your custody to another detention facility, we request that you forward our Detainer to said facility at the time of transfer and advise this office as soon as possible.

The notice and speedy trial requirements of the Interstate Agreement on Detainers Act do NOT apply to this Detainer because the subject is not currently serving a sentence of imprisonment at the time the Detainer is lodged.
IF THE SUBJECT IS SENTENCED WHILE THIS DETAINER IS IN EFFECT, PLEASE NOTIFY THIS OFFICE AT ONCE.

Please acknowledge receipt of this Detainer. In addition, please provide one copy of the Detainer to the subject and return one copy of the Detainer to this office in the enclosed self-addressed envelope.

Very truly yours,

RECEIPT
Date: April 22, 1999
Signed: *Shelton L. Hughes Jr.*
By: *Shelton L. Hughes Jr.*
Title: *Director*

CC: Clerk
USA
PD
USMS Charleston

By: *T.G. Mayo*

EXHIBIT E-1

General Sessions

CASE HISTORY FOR CASE # F452118

The State of South Carolina VS Arthur Jones

CASE TYPE: GS

FILED DATE: 2/19/1997

JUDGE: Solicitor / Master In Equity G S And C P

STATUS: Dismissed

Att LaKeysha

(P3)

CASE PARTIES:

Defendant Jones, Arthur
Rte 2 Box 608, Summerton, SC 291480000

CASE HISTORY FOR CASE F452118

Jones, Arthur
Rte 2 Box 608

Summerton, SC 291480000

Age: 34

DOB: 6/27/1978

DL#:

SSN: 249-49-6078

CHARGE

0139 Robbery / Armed Robbery, robbery while
armed or allegedly armed with a deadly

SENTENCING

weapon
CASE REMANDED TO FEDERAL COURT

VIOL. DATE

DISPOSITION

DISP. DATE

2/11/1997

Dismissed Not Indicted

6/1/1999

COST

ORIGINAL

BALANCE DUE

DISBURSED

PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
6/1/1999	12:00 AM	recorded the following

SCCourts.org
Clarendon County
Case Search

COPIE THIS OFFICE
Jail 13

WORK OF COURT
CLARENCE COUNTY, SC

Print Date: 05/21/2013
Print Time: 9:37:34AM
Requested By: C14PJOYNER

CaseHistory.rpt V6.1

Page 1 of 1

EXHIBIT F-1

General Sessions

CASE HISTORY FOR CASE F452117

The State of South Carolina VS Arthur Jones

FILED DATE: 2/19/1997

CASE TYPE: GS

STATUS: Dismissed

JUDGE: Solicitor / Master In Equity G S And C P

CASE PARTIES:

Defendant Jones, Arthur

Rte 2 Box 608, Summerton, SC 291480000

CASE HISTORY FOR CASE F452117

Jones, Arthur
Rte 2 Box 608Age: 34
DL#:DOB: 6/27/1978
SSN: 240-39-8449

Summerton, SC 291480000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0116 Murder / Murder	2/11/1997	Dismissed Not Indicted	6/1/1999

SENTENCING

REMANDED TO FEDERAL COURT

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION	
6/1/1999	12:00 AM	recorded the following Case Note: Date Dispositio	Entered 1999-06-01

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 5/21/13
B. Clark H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Print Date: 05/21/2013
Print Time: 9:37:44AM
Requested By: C14PJOYNER

CaseHistory.rpt V6.1

Page 1 of 1

EXHIBIT F-2

1 THE DEATH PENALTY IS JUST IRRELEVANT TO THIS CASE.

2 MR. COBB: IN FEDERAL COURT, IN THIS COURT.

3 THE COURT: RIGHT.

4 MR. COBB: YES, SIR.

5 THE COURT: I AM NOT SO SURE YOU CAN GO BACK IN
6 STATE COURT AFTER BEING TRIED IN FEDERAL COURT.

7 MR. COBB: TWO SOVEREIGNS.

8 THE COURT: I KNOW. BUT IT WORKS ONE WAY. I DON'T
9 KNOW IF IT WORKS THE OTHER WAY.

10 MR. KITTRELL: MY UNDERSTANDING IS THEY CANNOT GO
11 BACK.

12 THE COURT: I DON'T THINK THEY CAN EITHER.

13 MR. KITTRELL: WE HAVE COME THIS FAR AND THEY CAN'T
14 GO BACK.

15 THE COURT: I THINK THEY CAN -- IF HE IS FOUND NOT
16 GUILTY IN STATE COURT, THE FEDERAL COURT CAN PROSECUTE HIM BUT
17 I DON'T THINK IT WORKS THE OTHER WAY. YOU ALL MIGHT WANT TO
18 TAKE A LOOK AT THAT.

19 MR. HALEY: BEFORE YOU CHARGE THE JURY THAT WOULD
20 INCLUDE STATE COURT, CAN WE HAVE SOME TIME TO LOOK AT THAT?

21 THE COURT: I WON'T TELL THEM ANYTHING.

22 MR. COBB: MY UNDERSTANDING IS THERE IS A STATUTORY
23 DOUBLE JEOPARDY BUT THAT ONLY APPLIES TO DRUG COUNTS.

24 THE COURT: YOU ALL TAKE A LOOK AT IT. I WILL TELL
25 THEM THAT TOMORROW. I DON'T NEED TO TELL THEM THAT TODAY.

EXHIBIT H-1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Arthur Jones, Jr.,
Petitioner,

v.

United States of America,

Respondent.

Civil Action No.: 6:16-cv-1059-MBS

ORDER

On April 5, 2016, Petitioner Arthur Jones, Jr., filed a petition for writ of mandamus in the United States Court of Appeals for the Fourth Circuit. ECF No. 1. The petition was simultaneously filed in the United States District Court and assigned to Magistrate Judge Kevin McDonald for pretrial handling pursuant to 28 U.S.C. § 636(b) (2012) and Local Civil Rule 73.02, D.S.C. ECF No. 2. This matter is before the court on the Magistrate Judge's Report and Recommendation, filed April 21, 2016.

I. RELEVANT FACTUAL AND PROCEDURAL HISTORY

Petitioner alleges that in February of 1997, he was taken into state custody and held on state criminal charges before being transferred to federal custody pursuant to a writ of habeas corpus *ad prosequendum* on or about April 29, 1999. ECF No. 1 at 6, 16. Petitioner was indicted on one charge of interference with commerce by threat or violence, in violation of 18 U.S.C. § 1951 (Count 1); and use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c), (j), and 18 U.S.C. § 2 (Count 2). These were the same charges for which Petitioner had been arrested and detained in state court. Petitioner's state charges were dismissed on June 1, 1999. Petitioner remained in federal custody until he was convicted on his federal

charges on November 3, 1999. ECF No. 1 at 6. Petitioner was sentenced on his federal charges on March 3, 2000, judgment was entered on March 8, 2000, and Petitioner's conviction was affirmed by the Fourth Circuit Court of Appeals on November 27, 2000.

On February 29, 2016, Petitioner filed a motion to remand the matter to state court. Petitioner claimed the federal court lacked subject matter jurisdiction because the Government had not filed a notice of removal as required by 28 U.S.C. § 1446. Petitioner asserted he was entitled to a due process hearing and an opportunity to file a motion to remand. ECF No. 1 at 9, 12. Petitioner's motion was denied on March 4, 2016. *See Jones*, No. 99-00362. Petitioner filed a writ of mandamus on March 30, 2016 seeking an order directing the remand of his criminal charges to state court. ECF No. 1 at 5.

II. DISCUSSION

In his Report and Recommendation, the Magistrate Judge asserts that Petitioner's request for mandamus relief was filed in the wrong court, and that Petitioner may only seek such relief from the Fourth Circuit Court of Appeals. ECF No. 7 at 4. The Magistrate Judge further found that the court was "without authority to order the State of South Carolina to prosecute the petitioner on charges that it dismissed almost seventeen years ago." *Id.* As a result, the Magistrate Judge recommended that the court dismiss the action without prejudice and without issuance and service of process. *Id.* at 5.

Petitioner filed objections to the Magistrate Judge's Report and Recommendation, contending that he correctly submitted his petition for mandamus to the United States Court of Appeals for the Fourth Circuit and any filing to the United States District Court was meant to be a courtesy copy of the petition. ECF No. 10 at 1. To support this contention, Petitioner references the petition's Fourth Circuit docket number. *Id.*

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court reviews *de novo* only those portions of a Magistrate Judge's Report and Recommendation to which specific objections are filed, and reviews those portions which are not objected to—including those portions to which only “general and conclusory” objections have been made—for clear error. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Opriano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

Here, it appears Petitioner's petition for writ of mandamus was docketed as a post-trial motion in error. Petitioner correctly filed his petition in the United States Court of Appeals for the Fourth Circuit. *Jones*, No. 16-1374, Doc. 7 at 1. The Fourth Circuit denied the petition because the relief sought is not available by way of mandamus. *Id.* at 2. Accordingly, the court declines to adopt the Magistrate Judge's Report and Recommendation. The Petition for writ of mandamus (ECF No. 1) is **DENIED AS MOOT**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Margaret B. Seymour
Senior United States District Judge

Charleston, South Carolina
February 23, 2017

THP56 540*23 *
PAGE 001 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 12-04-2015

* 12-04-2015
* 09:26:33

REGNO...: 95635-071 NAME: JONES, ARTHUR JR

FBI NO.....: 646917AB6 DATE OF BIRTH: 06-27-1978 AGE: 37
ARS1.....: THP/A-DES
UNIT.....: LCP QUARTERS.....: C01-231L
DETAINERS.....: NO NOTIFICATIONS: NO

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: LIFE

-----COURT JUDGMENT/WARRANT NO: 010-----

COURT OF JURISDICTION.....: SOUTH CAROLINA
DOCKET NUMBER.....: 2:99-362-1
JUDGE.....: NORTON
DATE SENTENCED/PROBATION IMPOSED: 03-03-2000
DATE COMMITTED.....: 04-06-2000
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$200.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$90.00

-----COURT OBLIGATION NO: 010-----

OFFENSE CODE....: 540
OFF/CHG: 18:1951 OBSTRUCTION OF INTERSTATE COMMERCE BY ARMED ROBBERY;
18:2 A&A

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 20 YEARS
TERM OF SUPERVISION.....: 3 YEARS
CLASS OF OFFENSE.....: CLASS C FELONY
DATE OF OFFENSE.....: 01-14-1997

G0002 MORE PAGES TO FOLLOW . . .

EXHIBIT K-1

THP56 540*23 *
PAGE 002 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 12-04-2015

* 12-04-2015
* 09:26:33

REGNO...: 95635-071 NAME: JONES, ARTHUR JR

-----CURRENT OBLIGATION NO: 020-----
OFFENSE CODE....: 899
OFF/CHG: 18:924(C) (J)&2 MURDER; A&A

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: LIFE
TERM OF SUPERVISION.....: 5 YEARS
CLASS OF OFFENSE.....: CLASS A FELONY
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CC OBLG 010
DATE OF OFFENSE.....: 01-14-1997

-----CURRENT COMPUTATION NO: 010-----

COMPUTATION 010 WAS LAST UPDATED ON 11-02-2010 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 11-02-2010 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010, 010 020

DATE COMPUTATION BEGAN.....: 03-03-2000
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA
TOTAL TERM IN EFFECT.....: LIFE
TOTAL TERM IN EFFECT CONVERTED...: LIFE
AGGREGATED TERM OF SUPERVISION...: 5 YEARS
EARLIEST DATE OF OFFENSE.....: 01-14-1997

JAIL CREDIT.....	FROM DATE	THRU DATE
	02-11-1997	10-25-1997
	10-30-1997	03-02-2000

G0002 MORE PAGES TO FOLLOW . . .

THP56 540*23 *
PAGE 003 OF 003 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 12-04-2015

* 12-04-2015
* 09:26:33

REGNO.: 95635-071 NAME: JONES, ARTHUR JR

TOTAL PRIOR CREDIT TIME.....: 1112

TOTAL INOPERATIVE TIME.....: 0

TOTAL GCT EARNED AND PROJECTED.: 0

TOTAL GCT EARNED.....: 0

STATUTORY RELEASE DATE PROJECTED: N/A

EXPIRATION FULL TERM DATE.....: LIFE

TIME SERVED.....: 18 YEARS 9 MONTHS 18 DAYS

PROJECTED SATISFACTION DATE.....: N/A

PROJECTED SATISFACTION METHOD...: LIFE

REMARKS.....: 11-02-2010 FILE ASSUMPTION PROJECT

G0000 TRANSACTION SUCCESSFULLY COMPLETED

SUPPORTING PAPERS

1 A. YES.

2 Q. ALONG WITH YOUR ATTORNEY'S SIGNATURES?

3 A. YES.

4 Q. MY SIGNATURE AND THE SOLICITOR'S SIGNATURE?

5 A. YES.

6 Q. IS THIS YOUR PLEA AGREEMENT?

7 A. YES.

8 Q. MR. JOHNSON, YOU PLED GUILTY, AS YOU STATED, TO THE ARMED
9 ROBBERY AT THE LAKE MARION TRUCK STOP ON JANUARY 14, 1997; IS
10 THAT RIGHT?

11 A. YES.

12 Q. AND ALSO TO USING A GUN DURING THAT ROBBERY; RIGHT?

13 A. YES.

14 Q. AND DO YOU UNDERSTAND THAT YOUR SENTENCE AS IT STANDS NOW
15 IS 25 YEARS IN JAIL?

16 A. YES.

17 Q. AND THAT WAS A REDUCTION IN SENTENCE, WAS IT NOT?

18 A. YES.

19 Q. YOU WERE FACING LIFE IMPRISONMENT; WEREN'T YOU?

20 A. YES.

21 Q. AND IF THESE CHARGES WERE TO SOMEHOW GO BACK TO THE STATE
22 YOU COULD ACTUALLY FACE THE DEATH PENALTY; COULD YOU NOT?

23 A. YES.

24 Q. DO YOU WANT THAT TO HAPPEN?

25 A. NO, MA'AM.

TRIAL TRANSCRIPT, VOL. II. pg. 182

1 MR. KITTRELL: WE RELEASE HIM FROM HIS WARRANT.

2 SPECIAL AGENT CHESTER MCFADDEN.

3 CHESTER MCFADDEN, SWORN:

4 MR. COBB: YOUR HONOR, MAY IT PLEASE THE COURT, THIS
5 IS SUBJECT TO THE MOTIONS MADE EARLIER.

6 THE COURT: SURE.

7 MR. KITTRELL: I'M SORRY, JUDGE, A LEGAL MATTER
8 ARISES.

9 (BRIEF PAUSE).

10 MR. KITTRELL: JUDGE, MAY WE APPROACH?

11 THE COURT: YOU ALREADY ARE.

12 (OFF THE RECORD AT THE BENCH).

13 CHESTER MCFADDEN, SWORN:

14 DIRECT EXAMINATION

15 BY MR. KITTRELL:

16 Q. GOOD AFTERNOON. YOU ARE SPECIAL AGENT CHESTER MCFADDEN?

17 A. YES.

18 Q. YOU ARE WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

19 A. YES.

20 Q. YOU HAVE BEEN INVOLVED IN THIS CASE?

21 A. YES.

22 Q. SPECIFICALLY, AND I AM REFERRING YOU TO FEBRUARY OF 1997,
23 FEBRUARY 10TH AND THE 11TH?

24 A. ALL RIGHT, SIR.

25 Q. YOU WERE INVOLVED IN THE CASE AND YOU WENT UP TO NORTH