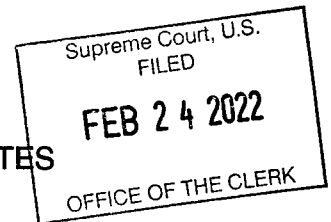


21-7325 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael T. BRAXTON — PETITIONER
(Your Name)

vs.

WARDEN OF Kershaw
CORRECTIONAL INSTITUTION — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, 4th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael T. BRAXTON
(Your Name)

1009 DAVID LEE COFFEE PLACE
(Address)

Anderson, South Carolina 29625
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1). Can a State agency abate Due Process, by making an independent determination AFTER and in CONTRAST to a lawful state court of Appeals ORDER?
- 2). Can a state agency pursue any other Lawful Appellate Process, other than a Motion to Rehear or Reinstatement, AFTER receiving an "UNFAVORABLE" or "Conflicting" decision from a state court of Appeals?
- 3). Can a state agency Forgo "Due Process", while disregarding one's Constitutional "LIBERTY INTEREST", by arbitrarily conducting a Probable Cause and Revocation hearing (20) TWENTY YEARS AFTER serving a Parole violation warrant?
- 4). Was an Ex post Facto violation committed by the State of South Carolina, in its Re-Confining the Petitioner for MORE time "AFTER" the Revocation of his Parole, than was statutorily required at the time he was sentenced?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- 1). Michael Braxton v. South Carolina Department of Corrections, 2017-001964, South Carolina Court of Appeals. Judgment entered July 1, 2020
- 2). Michael Braxton v. South Carolina Department of Corrections, 20-AJ-04-0325-A-AP, Administrative Law Court of South Carolina. Judgment entered August 26, 2020
- 3). Michael Braxton v. Warden of Kershaw Correctional Institution, C.A. No. 8:20-3168-HMH-JDA, United States District Court for the District of South Carolina, Anderson/Greenwood Division. Judgment entered Feb 11, 2021
- 4). Michael T. Braxton v. Warden of Kershaw Correctional Institution, No. 21-6264, United States Court of Appeals, Fourth Circuit. Judgment entered Oct 21, 2021
- 5). Michael T. Braxton v. Warden of Kershaw Correctional Institution, No. 21-6264 (8:20-cv-03168-HMH) United States Court of Appeals, 4th Circuit. Judgment entered Jan 19, 2022

TABLE OF CONTENTS

OPINIONS BELOW.....	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4-11
REASONS FOR GRANTING THE WRIT	12-14
CONCLUSION.....	15.

INDEX TO APPENDICES

APPENDIX A -	<u>MICHAEL T. BRAXTON V. WARDEN OF KERSHAW CORRECTIONAL Institution, No. 21-6264, UNITED STATES COURT OF APPEALS, 4th Cir. Certificate of Appealability DENIED, appeal dismissed.</u>
(Oct 21, 2021)	
APPENDIX B -	<u>MICHAEL T. BRAXTON V. WARDEN OF KERSHAW CORRECTIONAL Institution, C.A. No. 2:20-cv-3168-HMH-JDA, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, ANDERSON GREENWOOD DIVISION. Motion Dismissed W/ PREJUDICE, Certificate of Appealability DENIED.</u>
(Feb 11, 2021)	
APPENDIX C -	<u>REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE: DENIED PETITIONER'S Motion For Summary Judgment, Dismissed Petition With PREJUDICE.</u>
(Jan 4, 2021)	
APPENDIX D -	<u>MICHAEL T. BRAXTON V. WARDEN OF KERSHAW CORRECTIONAL Institution, No. 21-6264 (2:20-cv-03168-HMH) UNITED STATES COURT OF APPEALS, 4th Cir. Petition For REHEARING DENIED.</u>
(Jan 19, 2022)	
APPENDIX E -	<u>MICHAEL BRAXTON V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 2017-001964, SOUTH CAROLINA COURT OF APPEALS. AFFIRMED IN PART AND REVERSED IN PART.</u>
(July 1, 2020)	
APPENDIX F -	<u>MICHAEL BRAXTON V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Docket No. 17-ALJ-04-0154-AA Decision of Department AFFIRMED. (ALC)</u>
Aug 24, 2017	
APPENDIX G -	<u>MICHAEL BRAXTON V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Docket No. 20-ALJ-04-0325-A-AP, SOUTH CAROLINA ADMINISTRATIVE LAW COURT. ORDERED that APPELLATE be CREDITED with (2) years and sixteen (16) days towards his sentence for his time on Parole.</u>
(Aug 26, 2020)	
APPENDIX H -	<u>MICHAEL BRAXTON V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 2020-001015, SUPREME COURT OF SOUTH CAROLINA. STRICKEN AND DISMISSED. Appellate Case No. 2020-001015</u>
(SEP 3, 2020)	

APPENDIX I - S.C. Code Ann. 24-11-10 (INTERSTATE CORRECTIONS COMPACT)

ARTICLE IV, PROCEDURES AND RIGHTS, SECTION (c) states: "Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the SENDING state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates for release on Probation or Parole, for discharge, or for any other purpose permitted by the laws of the sending state."

APPENDIX J - (ARTICLE I) 18 USCS INTERSTATE AGREEMENT ON DETAINERS

The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produced uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

APPENDIX K - SOUTH CAROLINA CODE ANN. 24-13-210 (CREDITS GIVEN TO CONVICTS FOR GOOD BEHAVIOR) Provides: "Any person who have served the term of imprisonment for which he has been sentenced less deductions allowed therefrom for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program. Section 24-13-210, SC Code of Laws (1976) requires that good conduct computations be made on an on-going month to month basis.

APPENDIX L - South Carolina Supreme Court order, denying STATE HABEAS, Feb 8, 2017 (Appellate Case No. 2017-000062)

INDEX TO APPENDICES (Cont.)

APPENDIX M - South Carolina Department of Corrections (Step #2) grievance form; form notes "final" decision on Feb 3, 2017.

APPENDIX N - South Carolina Department of Corrections correspondence to the Petitioner, notifying him of the agency's "SECOND" determination.

APPENDIX O - Petitioner's Correspondence to the Honorable Clerk of the South Carolina Supreme Court, seeking Assistance in obtaining a sentence computation.

APPENDIX P - The Honorable Clerk of the South Carolina Supreme Court response to the Petitioner; his personal correspondence to (SCDC) Director Bryan P. Stirling.

APPENDIX Q - Petitioner's Motion Requesting Immediate Release From State Custody, submitted to South Carolina Court of Appeals.

APPENDIX R - Petitioner's correspondence to the honorable Judge Furterburk seeking assistance.

APPENDIX S - "Delay in tendering Parole revocation hearing was unreasonable and violative of due Process" Robb v. Norton, D.C. Conn. 1975, 399 F. Supp 850.

APPENDIX T - Jurisdictions, Proceedings, Persons and OFFENSES ... 35 C.S.S. EXTRADITIONS, Provides: "The Interstate Agreement on Detainers Act generally does NOT apply to persons who have been placed on Parole in the SENDING state, however, it does continue to apply to a prisoner who is Paroled from the SENDING state while awaiting trial in the RECEIVING state".

APPENDIX U - 28 U.S.C. § 2254 (b)(1)(ii), Provides: Failure to exhaust may be excused if "there is an absence of a available state corrective process" or "circumstances exist that render such process ineffective to protect rights of the applicant."

TABLE OF AUTHORITIES CITED

CASES

CASES	PAGE NUMBER
<u>CROOKS v. SANDERS</u> , 123 S.C. 28 115 S.R. 760 ALR 940 (1964)	5
<u>Figgs v. Dawson</u> , U.S. Court of Appeals, 7th Cir. July 25, 2016 829 F.3d 895	14
<u>Gaddy v. Michael</u> , U.S. Court of Appeals, 4th Cir. 519 F. 2d 669, 18 U.S.C.A. 4205-4207.	4
<u>Haygood v. Younger</u> , C.A. (Cal) 1985, 769 F. 2d 1350.	8
<u>LASALLE BANK National Ass'n v. Davidson</u> , (S.C. 2009) 386, S.C. 276, 688	12
S.R. 2nd 181 U.S.C.A. const. Amend 14, Const. Art 133.	
<u>Mazav. Warren</u> , 628 F. 3d 1042, 2012 WL 1592117 *2 (9th Cir 2012)	11
<u>Morrissey v. Brewer</u> , 408 U.S. 471, 92 S. Ct 2593 33 L. Ed 2d 484 (1972)	14
<u>Perkins v. Peyton</u> , C.A. 4 (Va) 1966, 369 F. 2d 590 Constitutional Law	14
4700; Constitutional Law 4830	
<u>SANDERS v. McDougall</u> , 244 S.C. 160, 135 S.R. 2d 836 (1964)	5
<u>Simpson v. State</u> , 329 S.C. 43, 495 S.R. 2d 429 (1998)	12

STATUTES AND RULES

283 U.S.C. 2254	7
<u>Title 18 U.S.C.A. 3583 (i) (FUGITIVE TOLLING ACT)</u>	5
<u>18 U.S.C.S INTERSTATE AGREEMENT ON DETAINERS</u> , CREMS and CRIMINAL PROCEDURE	5
Jurisdictions, Proceedings, Parsons and OFFENSES involved - Parole and Probation	
<u>35 C.J.S. EXTRADITION and DETAINERS</u> } 101	5
<u>U.S. Const. 5th Amendment V</u> , Due Process, Double jeopardy	8
<u>U.S. Const. 8th Amendment VIII</u> , CRUEL and Unusual Punishment	8
<u>U.S. Const. 14th Amendment XIV</u> , Due Process, EQUAL PROTECTION	8, 12, 13
2254 (b) (1) (ii)	11
<u>South Carolina Code Ann. 7-17-11-10 (AGREEMENT ON DETAINER FENACTED INTO LAW)</u>	10
<u>Rule 221, 242 (a)(c) SCACR</u>	8, 14
<u>S.C. Code Ann. 24-11-18, (INTERSTATE CORRECTIONS COMPACT)</u>	4
<u>S.C. Code Ann. 24-13-210 (CREDIT GIVEN TO CONVICTS FOR Good Behavior)</u>	5

OTHER

South Carolina Department of Corrections Policy - <u>OP-21.09</u> , 13.4.5 (Tolling of PRISONERS RWC/REC'S)	10
South Carolina Department of Corrections Policy - <u>OP-21.09</u> , 13.4.3 (INMATE RECORDS PLAN)	10

CASES

TABLE OF AUTHORITIES CITED (Cont.) PAGE NUMBER

State v. Ellis, 397 S.C. 526 Supreme Court of South Carolina No. 271127. 6

United States v. Brown, U.S. Court of Appeals, 4th Cir. 5

United States v. Buchanan, 638 F. 3d 448 (4th Cir 2011) 5

United States v. Thompson, U.S.C.A. 4th Cir 924 F.3d 122, May 10, 2017 5

United States v. Tippens, 39 F. 88, 90 (5th Cir 1994) 9

Ward v. Chavez, 678 F. 3d 1042, 2012 WL 1592171 *2 11

(4th Cir 2012) Ward at *2 (quoting Friley at 923).

Wolfe v. McDonnell, 418 U.S. 534, 94 S.Ct 2963, 41 L.R. 20935 8

Carrier, 477 U.S. at 495-96. 14

Coleman, 501 U.S. at 750. 14

U.S. v. Paskow, U.S. Court of Appeals, 9th Cir, 11 F. 3d 873, (Nov 26, 1993) 5

Michael Braxton v. Warden Dunlap: South Carolina Department of Corrections - 6
Appellate Case No. 2017-000062

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the SOUTH CAROLINA ADMINISTRATIVE LAW COURT court appears at Appendix G to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 21, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 19, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was July 1, 2020.
A copy of that decision appears at Appendix E.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1). TITLE 18, U.S.C.A. § 3383(i) (FUGITIVE TOLLING ACT) DECEMBER 18, 2016 ***
FUGITIVE WARRANT - the court of Appeals held that only if defendant fled "with intent to avoid arrest or prosecution" would he have fugitive status for purposes of tolling limitations period based on fugitive status.
- 2). 18 U.S.C., INTERSTATE AGREEMENT ON DETAINERS, (ARTICLE I) TITLE 18, CRIMES AND CRIMINAL PROCEDURE (33) — (APPENDIX J)
- 3). Jurisdictions, Proceedings, Persons and Offenses involved - Parole and Probation
35 C.J.S. EXTRADITION and DETAINERS § 101 — (APPENDIX T)
- 4). U.S. Const. 5th Amendment V, Due Process, Double Jeopardy
- 5). U.S. Const. 8th Amendment VIII, CRUEL and UNUSUAL Punishment
- 6). U.S. Const. 14th Amendment XIV, Due Process, Equal Protection
- 7). § 2254 (b)(1)(ii) — (APPENDIX U)

STATEMENT OF THE CASE

If it may please this honorable court, the Petitioner Michael T. BRAXTON comes respectfully before it seeking guidance not only for himself, but for ALL others who are afflicted under the cloak of "SELECTIVE" due process.

Our conflict continues to exist, even though the CONSTITUTION and ALL statutory enacted guidance explicitly establishes the FUNCTION, INTENT and NECESSITY of DUE PROCESS!

On November 17, 1983 the Petitioner was sentenced to serve (30) years within the South Carolina Department of Corrections.

On March 31, 1994 he was Paroled to the State of TENNESSEE via (INTERSTATE CORRECTIONS COMPACT) S.C. Code Ann. § 24-11-10 (Appendix - I)

He remained at-large on Parole supervision until April 16, 1996, thereafter, he was incarcerated for an unrelated offense. He remained continuously confined at the Davidson County Justice Center in Nashville, TENNESSEE until JUNE 1, 1998.

While incarcerated there a "Parole Violation" warrant was served on May 28, 1996.

A "HOLD" is NOT a vehicle that grants authorization to SUSPEND, FRUSTRATE or ultimately EXTINGUISH one's Constitutional Due Process rights. Gaddy v. Michael, U.S. Court of Appeals, 4th Circuit, 519 F.2d 669, 18 U.S.C.A. 4205 - 4207 Constitutional Law (K) Parole.

On June 1, 1998 the Petitioner was transferred to the TENNESSEE Department of Corrections, on June 8, 1998 a SECOND Parole Violation warrant was served.

After serving (7) SEVEN MONTHS, the Petitioner expired his Tennessee sentence on November 2, 2015. Thereafter, the Petitioner was extradited back to the State of South Carolina (Anderson County); he finally arrived on November 8, 2015.

The Petitioner received his FIRST Probable Cause and Revocation Hearing AFTER he was extradited back to South Carolina. He received his 1st Probable Cause hearing on November 18, 2015, then his 1st Revocation hearing on January 20, 2016. Robb v. Nesten, D.C. Com 1975, 394 F. Supp 856. (Appendix - S)

After the review of the Full Parole Board, the Petitioner was re-committed to the South Carolina Department of Corrections to serve a sentence that "EXPIRED".

while he was at-large on Parole, incarcerated pre-trial and Post-trial in Tennessee; with the inclusion of the Goodtime mandated to be earned under the Title 18, U.S.C.A. § 3583 (i) "FUGITIVE TOLLING ACT" December 18, 2016, *** FUGITIVE WARRANT - The Court of Appeals held that only if defendant fled "with intent to avoid arrest or prosecution" would he have Fugitive status for purposes of tolling limitations period based on Fugitive status.

United States v. Thompson, U.S. Court of Appeals, 4th Circuit 924 F.3d 122 May 10, 2019 Held, "Defendant was no longer a Fugitive, and thus tolling no longer applied as of the date he was located and arrested." Also see U.S. v. Brown, U.S. Court of Appeals, 4th Circuit.

United States v. Buchanan, 638 F.3d 448 (4th Cir 2011), Provides: "The burden is on the government to establish facts that justify Fugitive tolling of term of supervised release."

18 USC, Interstate Agreement on Detainers, (Article I)

SEE Appendix J ***

In conjunction with this act § 100 Jurisdictions, Proceedings, Persons and Offenses. 35 CJS Extraditions, Provides: "The Interstate Agreement on Detainers Act generally does not apply to persons who have been placed on Parole in the sending state, However, it does continue to apply to a prisoner who is Paroled from the sending state while awaiting trial in the Receiving state."

South Carolina Code Ann. § 24-13-210 (CREDITS GIVEN TO CONVICTS FOR GOOD BEHAVIOR) SEE APPENDIX - K **

U.S. v. Paskow, U.S.C.A., 11 F.3d 873, Provides: "It is the original sentence that is executed when defendant is returned to prison AFTER violation of terms of BOTH Parole and Supervised release."

SANDERS v. McDougall, S.C. Supreme Court, 244 S.C. 160, 135 S.E. 2d 836; Provides: "The effect of such Revocation does NOT EXCEED or transcend the effect of the original sentence."

CROOKS v. SANDERS, 123 S.C. 28, 115 S.E. 760 28 ALR 940; Provides: "A convict released from the bounds of prison on Parole, which did NOT suspend the running of his sentence, is entitled to credit on account of good behavior."

State v. Ellis, 397 S.C. 576 Supreme Court of South Carolina 271127, Provides: "Parole means conditional release from imprisonment and does NOT suspend the running of a Prisoner's sentence."

After being classified and placed in the "Permanent Institution", it was apparent that all contacted South Carolina Department of Corrections classification staff were in complete denial of the expiration status of the Petitioner's sentence.

The Petitioner subsequently filed a State Habeas to the Supreme Court of South Carolina, this Court directed him to the Administrative Process. Michael BRAXTON v. Warden Dunlap: South Carolina Department of Corrections; Kershaw Correctional Institution; and Director Sterling. Appellate Case No. 2017-000062. SEE Appendix-L (ORDER)

The Petitioner timely filed his (STEP #1) grievance under the claim that the South Carolina Department of Corrections failed to credit him with the time he served on Parole, as well as the time he served being incarcerated Pre and Post trial in Tennessee.

Upon denial of this initial grievance, the Petitioner timely filed his (STEP #2) grievance to the South Carolina Department of Corrections "Central Classification". The (STEP #2) grievance was denied, and it is noted on the form that this determination is considered the agency's "FINAL" determination! (Appendix-M) (STEP #2 Grievance)

The Petitioner then filed his appeal to the Administrative Law Court for the State of South Carolina, after the denial received from this Court, he filed his notice, then appeal to the South Carolina Court of Appeals. (Appendix-F) (ALC order of denial)

On July 1, 2020 the South Carolina Court of Appeals Affirmed in Part and Reversed in Part the Order of the South Carolina Administrative Law Court. (Appendix-E) (ORDER)

The South Carolina Administrative Law Court's order on Remand Mandated that the Petitioner/Appellant be credited with (2) years (16) days on his sentence for his time on Parole. (Appendix-G) (ORDER)

The South Carolina Department of Corrections then contacted Judge Funderburk of the (ALC) with a "letter of explanation", expressing why they had calculated the Petitioner's sentence correctly.

Judge Funderburk issued the immediate response stating he could only follow the directions of the court; and suggested that (SCDC) Forward it's explanation to the South Carolina Court of Appeals. [Doc. 18-2 at 1] [Id at 3] R & R pgs 4-5

At that point the Department of Corrections sent correspondence to the Petitioner stating: "it had already given him credit for his time on Parole, it considers the matter CLOSED, and No further action will be taken." [Doc. 15-2 at 1] (Appendix-N) (Letter to Petitioner)

Prior to this "SECOND" agency determination, the Petitioner filed "Numerous" grievances from 2017-2020 AFTER he had contacted officials from base classification staff, to the Director of the South Carolina Department of Corrections. The Petitioner sought the ADDITIONAL correction of the occurrence of his erroneous classification, AFTER the Revocation of his Parole; due to the Misapplication of his EARNED goodtime and EARNED work credits. (Appendix - Q and P) (Letter to S.C. Supreme Ct. Clerk) ^{Response}

Ultimately the Petitioner filed his 28 U.S.C. § 2254, AFTER he sought assistance from the South Carolina Court of Appeals and Judge Funderburk, to compel the South Carolina Department of Corrections to comply with the directive issued by the South Carolina Court of Appeals and the Administrative Law Court. (Appendix - Q and R) (Motion to S.C. Court of Appeals)

The Magistrate Judge's Report or Recommendation asserted in it's opinion that the Petitioner had NOT exhausted his available state court remedies prior to seeking review in Federal Court.

Further, the court stated "that an inmate that was dissatisfied with the decision of the (ALC) may seek judicial review from the South Carolina Court of Appeals, and ultimately, the Supreme Court of South Carolina." [Doc. 15-1 at 4-6] (R&R pg's 11 and 14) Appendix - C

Additionally, the court reiterated its ambiguous claim that the Petitioner had committed "procedural Bypass", by not requesting a "Contest Case hearing before the (ALC), AFTER actual or constructive notice of the agency's SECOND determination, which was derived without the burdensome application of Due Process. (R&R pg. 15)

The South Carolina Department of Corrections Failure to adhere to 221,242

APPELLATE COURT
(a)(c) South Carolina ~~Department of Corrections~~ Rules (SCACR), by not submitting a petition for Rehearing or Reinstatement CLOSED the state appellate process for the Department, as it did for the Petitioner; However, the U.S. District Court and the United States Court of Appeals appear to be unified in their conclusion that "Due Process" was an unnecessary consideration for the South Carolina Department of Corrections, AFTER they received a ruling in contrast to their First and "Final" determination, then their SECOND Illegal assessment formulated exclusively from the agency's perspective.

"Detention beyond the termination of sentence can constitute Cruel and Unusual punishment if it is the product of deliberate indifference to Prisoner's liberty interest; otherwise such detention can be held UNCONSTITUTIONAL only if it violates due process." U.S.C.A.S, 8, 14
Haygood v. Younger, 769 F.2d 1350

"The statutory right to sentence related credits is a protected LIBERTY INTEREST under the 14th Amendment entitling an inmate to minimal due process to ensure the state created right was not arbitrarily abrogated."
Wolff v. Mc Donnell, 418 U.S. 539, 94 S.Ct 2903, 41 L.E. 20935
(1974)

The South Carolina Court of Appeals and the South Carolina Department of Corrections BOTH calculated the Petitioner's full expiration date before application of Good time and Work credits to be June 22, 2022.

The Honorable court of Appeals stated that the Petitioner's time on Parole had NOT been credited towards his sentence, Therefore, it (the Court) ORDERED the Administrative Law Court to adjust his time to the extent that he RECEIVES credit for his time on Parole.

In its "Order on Remand", The Administrative Law Court "SO ORDERED, that the Appellant be credited with (2) years (16) days towards his sentence for his time on Parole." However the (ALC) calculated this time without the inclusion of the Good Time he was mandated to earn under statute, Precedent and policy.

Additionally, the Petitioner's states AFTER being incarcerated pre and Post trial in Tennessee, Without EVER receiving a Probable Cause or Revocation hearing during this incarceration, escaped the court's scope in "Both" of its opportunities to review the Petitioner's sentence credit related issues. When the Petitioner sought review and correction of this occurrence from Judge Funderburk, No response was rendered. (Appendix-R) Correspondence to the (ALC's) Judge Funderburk.

By not affording the Petitioner a timely Probable Cause or Revocation hearing violated his Constitutional right to Due Process protected by the Fourteenth (14th) amendment "A delay in executing the violator's warrant may frustrate a probationer's due process rights if the delay undermines his ability to contest the issue of the violation or proffer mitigating evidence." United States v. Tippers, 39 F. 88, 90 (5th Cir 1994).

The blatant disregard of clear and relevant state statutes and Policy completely discarded by the State of South Carolina cannot be ignored.

South Carolina Code Ann. §17-11-10 (AGREEMENT ON DETAINERS

ENACTED INTO LAW; TERMS) section (G) U.F. Provides: "During continuance of temporary custody or while prisoner is otherwise being made available for trial as requested by this agreement, time being served on sentence SHALL CONTINUE TO RUN but Good time shall be earned by the Prisoner only if and to the extent, the law and practice of the jurisdiction in which imposed the sentence may allow"

South Carolina Department of Corrections policy: OP-21-09 (INMATE RECORDS PLAN) 13.4.5 TOLLING OF A PRISONER'S FWC/EEC'S states:

"An Inmate's time of imprisonment WILL CONTINUE TO RUN while the inmate is subject to the temporary custody of the RECEIVING state. The Inmate WILL CONTINUE TO EARN GOODTIME, but not earned work or earned educational credits."

SCDC policy OP-21-09 continues to provide: "At the earliest possible ~~time~~ time after trial and sentencing are completed in the receiving state, the inmate MUST be returned to the custody of officials in the SENDING state and notified of the disposition of the charges".
(Inmate Records Plan) 13.4.3.

The absolute "indifference" of the state of South Carolina and it's joining agencies has been consistently prejudicial throughout, the refusal to apply the Petitioner's Delinquent Actual and Goodtime, has subjected the Petitioner to ILLEGAL continuous confinement well AFTER the full expiration of his sentence. The status of the South Carolina Department of Corrections, being in "contempt" or TWO valid State Appellate Court orders, is of no consequence to this arrogant entity.

With all due respect, if the Petitioner had received an "UNFAVORABLE" ruling from a state appellate court, his ONLY recourse would lie in pursuit of the Appellate Process; is the state of South Carolina EXEMPT from an established "Constitutional" practice?

Finally, it must be noted that the Supreme Court of South Carolina's denial of the Petitioner's state habeas in 2017, serves as the guidepost that accurately defines the state of South Carolina's perspective on his Constitutional issues.

Ward v. Chavez, 678 F.3d 1042, 2012 WL 1592171*2 (9th Cir 2012)

Ward at *2 (quoting Fralley at 925) where an official BOP policy forecloses administrative relief, exhaustion of administrative remedies would be futile. (Exhaustion would be futile where BOP policy would almost certainly have resulted in the denial of further administrative appeals).

Maza v. Warren, 2010 WL 4961678 (2010) U.S. Dist. Court C.D.

CA1, West Division. Provides: "Where agency has predetermined an issue before it, exhaustion would be futile and should be excused."

Failure to exhaust may be excused if "there is an absence of available state corrective process" or "circumstances exist that render such process ineffective to protect rights of the applicant." § 2254 (b)

(i), (ii).

REASONS FOR GRANTING THE PETITION

The legal question in this urgent matter is whether the Constitutional application of "Due Process" can be ABORTED or DEVERTED?

The Petitioner has alleged that a Constitutional violation, that constitutes a "denial of Fundamental Fairness shocking to the Universal Sense of Justice" has occurred in his case. Simpson v. State, 329 S.C. 43, 495 S.E. 2d 429 (1998).

His PROOF lies squarely within the Material FACT(s) present within the Record, however to this point, ALL judicial mechanisms of REVIEW have endorsed the State of South Carolina in its assertion that Due Process is a "SUGGESTIVE" practice, rather than a MANDATORY Bedrock provision of the United States Constitution.

"DUE PROCESS" of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal, before any binding decree, order, or judgment can be made affecting his right to life, liberty or property."
Casale Bank National Ass'n v. Davidson, (S.E. 2009) 386 S.C. 276, 668 S.E. 2d 121 U.S.C.A. Const. Amend 14; Const. ART 1 § 3.

The lack of Penological Justification that has placed the Petitioner in the CRUEL, UNUSUAL and INHUMANE circumstance of being confined to serve (6) SIX ADDITIONAL years on an "EXPERD" Sentence is IRREPAIRABLE, however the broader concern is the profound likelihood of "Repetition", that has the grave potential to erode the entire Foundation that Fortifies a Fair and impartial Judicial Review.

Confining the Petitioner under the constraint of a Parole Violation Warrant From May 28, 1996 - November 2, 2015 (20 YEARS), without affording him a timely Probable Cause or Revocation hearing, was the origin of the INDIFFERENCE that manifested into a stance of DEVOOT DEFIANCE, pertaining to the expiration status of the Petitioner's sentence BEFORE the revocation of his Parole, then TWICE afterwards.

The Petitioner was sentenced in 1983, many provisions of the State of South Carolina's Criminal statute(s) changed drastically in 1996; Specifically, the method dictating the application of GOODTIME, WORK CREDITS and Bonus Educational credits.

The State of South Carolina in conjunction with the relevant agencies, the South Carolina Department of Corrections and the South Carolina Department of Parole, Probation and Pardon Services exhibited no regard for the RE-ESTABLISHMENT of Criminal statutes, Policies, Protocol and Procedures, as they callidously assigned the Petitioner to a "NEW" sentence, Forgoing the incumbent imposition of due process. U.S. Const. Amend. XIV 1 - DUE PROC *** nor shall any state deprive any person of life, liberty or property without due process of law. ***

The state of South Carolina's lack of recognition of applicable Federal statute, as well as the disregard of its own prevailing statute, Policies, Procedure and Protocol is undoubtedly disturbing, however what is truly ALARMING is how this Monumental transgression has advanced to our country's SUPREME level of Judicial review?

"In Carceration beyond the date when a person is entitled to be released violates the EIGHTH Amendment if it is a product of Deliberate Indifference". U.S. Const. Amend. 8. Figgs v. Dawson, U.S. Court of Appeals, 7th Cir. July 25, 2016, 829 F. 3d 893-

Complaint that No Preliminary or Probable cause hearing was held, Due Process requires the opportunity to be heard prior to revocation". Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 33 L.Ed. 2d 484 (1972)

The South Carolina Department of Corrections Failure to submit a timely Motion For Rehearing or Reinstatement, AFTER receiving a ruling from a state appellate court, in CONTRAST to it's own "FINAL" agency determination, CLOSED the appellate process for the agency. Rule 221, 242 (m)(c), SCACR

Nevertheless, the informal return launched by the department, by contacting the Administrative law Judge directly, has been condoned by ORDER, by BOTH STATE and FEDERAL governing authorities.

Clarity MUST be appointed to this dire "Constitutional" Concern. a FUNDAMENTAL MIS-CARRIAGE OF JUSTICE HAS OCCURRED. Carrier, 477 U.S. at 495-96; Coleman, 501 U.S. at 750.

"State prisoner has a right under this amendment to be released from service of a sentence on expiration of it's unequivocal term, and has the right not to be detained under a judgment which is so vague and uncertain as to be invalid under principles of due process". Perkins v. Peyton, C.A. 4 (Va) 1966, 369 F. 2d 590 Constitutional law 4700, Constitutional law 4830.

I pray that this Honorable Court deems this WRIT appropriate
for consideration.

CONCLUSION

The Petitioner PRAYS he is proper before this Honorable Court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael T. Brest

Date: February 24, 2022