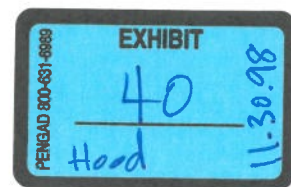


November 10, 2020



**Erin B. Crawford, Esquire**  
Chief Counsel, Judicial Merit Selection Commission  
104 Gressette Building  
Post Office Box 142  
Columbia, SC 29202

RE: Complaint filed by Desa Ballard against The Honorable Robert E. Hood

Dear Ms. Crawford:

Please allow this letter to serve as my response to the complaint filed by Desa Ballard, Esquire. As an initial matter, the complaint was untimely as it was filed on November 4, 2020, two days after the deadline set by Judicial Merit Selection Commission (JMSC).

As to the merits of Ms. Ballard's complaint, it is baseless and unfounded. Ms. Ballard previously filed essentially the same complaint with almost the same attachments against me before the South Carolina Office of Disciplinary Counsel (ODC) on March 26, 2018. (See Exhibit #1). The only difference in her exhibits to JMSC is these exhibits now include the letter from ODC formally dismissing the complaint she filed against me. Ms. Ballard asserts alleged judicial misconduct occurred during the summer of 2017, yet she failed to file a complaint with ODC until some nine months later (time frame may vary based on various dates in Ms. Ballard's complaint). A review of the timeline, even as asserted by Ms. Ballard, clearly shows she did not file a complaint against me at the time she alleges a violation but some nine months later and only after receiving an unfavorable outcome.

I promptly filed a response to the ODC complaint on May 11, 2018 with attachments (See Exhibit #2). As you will see in the full response included with this letter, I heard the civil non-jury case of Charles Carpenter against the South Carolina Department of Corrections and the State of South Carolina on June 6, 2017. Prior to this hearing being scheduled, I had no knowledge or information of Mr. Carpenter or his case. Not only is there no evidence of bias to support Ms. Ballard's allegations, but Ms. Ballard also never raised any alleged bias until after the case was decided adversely to her client. Ms. Ballard asserts my prior service as a prosecutor for the statewide grand jury makes me bias for the state. Such an assertion is clearly Ms. Ballard's false assumption as there is no evidence that I advocated for or am biased for the state. This allegation is baseless, offensive, and not supported by any facts or evidence.

Following the full hearing, I suggested a potential resolution of the issues to the parties. I expressly informed counsel that my suggestion was just that, and they were free to accept or reject the resolution. Such a suggestion is not a violation of judicial conduct. In fact, the comments to Judicial Canon 3(B)(8) note that a judge "should encourage and seek to facilitate settlement."

1 of 3

Ms. Ballard's complaint to JMISC furthermore mischaracterizes the Court of Appeals Order in Mr. Carpenter's case. Ms. Ballard makes much ado about my orders being vacated by the Court of Appeals and implies that this is evidence of alleged misconduct. However, a reading of the Court of Appeals Order shows my orders were vacated on the grounds that a prior Circuit Court Order issued by another judge prior my hearing and allowing Mr. Carpenter's actions to go forward was improper. (See Exhibit #3). In other words, the issues I ruled on were not properly before me as the issues were only proper for a post-conviction relief action (PCR).

On June 25, 2018, ODC summarily dismissed Ms. Ballard's complaint against me and deemed it not worthy of further investigation. (See Exhibit #4). This dismissal noted an investigative panel inquired as to whether or not there was evidence of unethical conduct or not. The panel reviewed the information and dismissed the complaint as a final disposition of the matter.

Despite ODC's dismissal of her complaint, Ms. Ballard also informed the *Post and Courier* newspaper about this alleged ethical violation. Once I was made aware of this, I granted ODC's Counsel full authority to discuss Ms. Ballard's allegations and my response with the *Post and Courier* newspaper.

Even though ODC found Ms. Ballard's complaints baseless and therefore dismissed them, she continues to attack me professionally, as evidenced by both her contact with the *Post and Courier* and this complaint with JMISC. Ms. Ballard alleges judicial misconduct occurred in the summer of 2017, yet she failed to take any action related to this alleged misconduct until after receiving an unfavorable outcome in her case. An unfavorable outcome is not evidence of bias or misconduct, yet that seems to be the basis of Ms. Ballard's issues.

During the entirety of Mr. Carpenter's case, as I do in all cases before me, I did my level best to conduct myself in a professional and ethical manner and that has been fully affirmed by the Office of Disciplinary Counsel as it relates to Mr. Carpenter's case.

Attached is my full response to the ODC investigation and ODC's letter issuing a dismissal of Ms. Ballard's complaint. I respectfully request JMISC to review these in full. I also attached a copy of the most recent court decision from the SC Court of Appeals in Mr. Carpenter's case whereby the Court of Appeals ruled my orders were vacated on the basis that former Chief Justice Toal made an error of law prior to my hearing because Ms. Ballard filed her case incorrectly when she originally filed the claims.

One final note is that Mr. Carpenter's case originally began in Chesterfield County in 1990. I was in middle school when his case began. To my knowledge, I neither worked on his case during my time at the State Grand Jury division of the Attorney General's office nor did I specifically choose to hear Mr. Carpenter's case in the summer of 2017. The case was assigned for me to hear in the normal course of business by The Honorable Deandre Benjamin.

I have had the privilege of being elected a Circuit Court Judge since my first election in February of 2012. It has been the honor and privilege of my life. Every day I strive to conduct myself in the manner prescribed by the Rules of Professional Conduct and the Judicial Canons

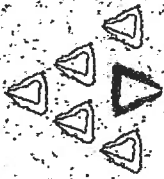
2 of 3

and in a matter befitting a Circuit Court Judge in South Carolina. I have done so in this matter and will continue to do so in the future.

Sincerely  
  
Robert E. Hood

3573

# EXHIBIT #1



**Ballard & Watson**  
**Attorneys at Law**  
 PERSISTENT. UNWAVERING.

Desa Ballard  
 Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
 226 State Street | West Columbia, SC 29169  
 ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

RECEIVED

MAR 26 2018

OFFICE OF  
 DISCIPLINARY COUNSEL

RECEIVED

MAR 26 2018

NON  
 JUDICIAL CONDUCT

March 23, 2018

Via U.S. Mail

John Nichols, Esquire  
 Office of Disciplinary Counsel  
 Post Office Box 12159  
 Columbia, South Carolina 29211

Re: *Circuit Court Judge Robert E. Hood*

Dear John:

The following is a report regarding what I believe to be judicial misconduct by Circuit Court Judge Robert E. Hood, and therefore something that I am required to report to your office for investigation as you deem appropriate.

We represent Charles Carpenter, an inmate at SCDC who has been incarcerated since 1990. Mr. Carpenter retained us to seek a writ of habeas corpus; his position was that his lawful sentence had been fully served and he was being illegally detained. After considerable research into the matter, we were able to identify several significant and novel issues, any one of which should have resulted in a successful outcome, so we agreed to seek that relief on his behalf. I am attaching a copy of the complaint (without exhibits attached, as they are substantial) we filed in Richland County on behalf of Mr. Carpenter against the Department of Corrections seeking Mr. Carpenter's immediate release from custody.

Judge Casey Manning was the first to hear arguments in that matter, and issued an order directing that we add "the State" as a party and serve the Attorney General, which we promptly did. Retired Chief Justice Toal next heard the Defendants' motions to dismiss and denied them. Judge Hood heard the case on the merits non-jury on June 6, 2017. We waited to file this report with you until Judge Hood's involvement had concluded<sup>1</sup> because we did not want our report to appear as an attempt to influence Judge Hood's actions or decisions in this matter.

At trial, no testimony was presented, although Carpenter introduced multiple exhibits. At the end of the hearing, Judge Hood indicated that he was taking the matter under advisement. The following Monday, June 12, 2017, Judge Hood's office advised that he "would like a time this

<sup>1</sup> We just submitted our initial brief on appeal of Hood's final orders in this matter, which finally gave us the time to gather all the relevant documents to submit to you.

week to discuss this case in chambers.” **Exhibit A**. After hearing from all counsel, Judge Hood confirmed the in chambers conference for 10:00 a.m. on June 13, 2017. **Exhibit B**.

The in-chambers conference was attended by Judge Hood and counsel for the parties. My partner Harvey Watson was physically present along with Damon Wlodarczyk on behalf of SCDC, and Clay Mitchell on behalf of the Attorney General’s office. I participated by telephone and took contemporaneous notes as the in-chambers conference proceeded. Those notes are attached as **Exhibit C**<sup>2</sup>. Judge Hood said he was not going to grant habeas corpus and have Mr. Carpenter “turn around and sue the state.” Judge Hood proposed that Carpenter execute a full general release in favor of the State, in which case he would be willing to grant Carpenter’s petition. Judge Hood directed that Carpenter would “give up any claim against the state” and the release should be “very broad.” Judge Hood said the documents should be drawn so that neither the State nor SCDC was admitting any fault, and it was his intent to “protect the state.” Judge Hood asked the parties to work out the details and agree to that resolution no later than June 30, 2017. *Id.*

That same day, Carpenter’s counsel reached Carpenter by telephone and he agreed to release any civil claims he may have against any department of the State of South Carolina as a condition of the grant of habeas corpus as proposed by Judge Hood. Carpenter’s counsel communicated Carpenter’s agreement to a release to Judge Hood’s proposal to defense counsel. **Exhibit D**. Carpenter executed a full general release (that we drafted) in favor the State and the Department of Corrections as proposed by Judge Hood, and a copy of the full release was transmitted to defense counsel by email on Friday, June 16, 2017. **Exhibit E**.

Then came several weeks of no communication with either Judge Hood or defense counsel. On Friday, June 23, 2017, we contacted defense counsel to inquire as to the status of their discussions with their respective clients since the June 30, 2017 deadline imposed by Judge Hood was approaching. **Exhibit F**. Counsel for SCDC responded that SCDC was “unable to alter or amend Carpenter’s sentence.” **Exhibit G**. Similarly, counsel for the State responded that the State as “unable to consent to Mr. Carpenter’s release.” **Exhibit H**.

On Monday, June 26, 2017, Carpenter’s counsel sent to Judge Hood a proposed order, narrowly drafted to grant habeas corpus in the manner indicated by Judge Hood in chambers, along with the correspondence between counsel and a copy of the general release executed by Carpenter as requested by Judge Hood. **Exhibit I**.

To preserve the record, Carpenter’s counsel filed the entirety of the correspondence and communication referenced above, including the full release signed by Carpenter, with the Richland County Clerk of Court, so the events following Judge Hood’s proposal for a consent resolution of

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<sup>2</sup> I have the original notes, the attached is a photocopy.

the petition for writ of habeas corpus were properly a part of the record.<sup>3</sup> **Exhibit J.** Judge Hood's secretary confirmed receipt of the June 28, 2017 correspondence and advised that Judge Hood was on vacation. She related, however, "please feel free to continue to work toward a final resolution if at all possible." **Exhibit K.**

On June 30, 2017, Carpenter's counsel sent Judge Hood a proposed order addressing the merits of the petition for writ of habeas corpus, in light of the objection raised by counsel for the State. **Exhibit L.**<sup>4</sup> Judge Hood went silent.

I was at the Richland County courthouse on another matter on July 11, 2017 while Judge Hood was doing guilty pleas in another courtroom. After my other matter concluded, I sat in the audience in Judge Hood's courtroom, close enough that he could see me but far enough back that it did not appear as if I was attempting to interfere with the proceedings. He made eye contact with me several times. After approximately 30 minutes, Judge Hood refused to take a plea and abruptly walked out of the courtroom and left the bench. The attorneys in the courtroom appeared confused about what had just occurred, but since the judge had not announced a recess, they remained in the courtroom. I exchanged pleasantries with several of them that I knew.

The recess lasted approximately 30 - 45 minutes. About 10-15 minutes after the recess started, a prominent criminal defense attorney whose name I did not then know, and now do not recall, entered the courtroom from the side door, with a younger gentleman. He greeted the people in the room as he passed through, then he excused himself through the back door immediately behind the judge's bench (where mere mortals are forbidden to go). He and his companion were gone about 15 minutes, then they returned to the courtroom, again greeted people, then left by the same side door from which they had entered. Judge Hood returned to the bench approximately 10 minutes later. The visiting attorney did not have any cases before the judge during the several hours that I was in the courtroom and no one from the solicitor's office left the courtroom to accompany the defense counsel into Judge Hood's chambers.

Judge Hood continued to take guilty pleas for approximately another hour, and when it appeared there were no other matters to be heard, Judge Hood asked the prosecutors if there was anything further. He made no eye contact with me, but by then I was the only person sitting in the audience. Several of the prosecutors responded in the negative and I stood just as Judge Hood stood and turned to exit the door behind the bench. I said, with enough volume to insure Judge Hood heard me, "Your Honor, may I approach?"; Judge Hood turned his head to the right, did not

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<sup>3</sup> The Clerk's office returned the \$25.00 check we had forwarded as a filing fee, but confirmed that the "documents placed in file." **Exhibit M.**

<sup>4</sup> Neither Judge Hood nor defense counsel have disputed any recitation of events memorialized by Carpenter's counsel in the multiple communications with the Court after the June 13, 2017 conference in chambers. Neither have defense counsel disputed our recitation of Judge Hood's proposal for a grant of habeas corpus in exchange for Carpenter's full release in favor of the State.

look at me, and said "no, ma'am" in such a loud voice that the others in the courtroom turned to look at me, as if seeking an explanation for Judge Hood's outburst. I left immediately to avoid any questions from the people who had witnessed the event.

When I returned to my office, I emailed defense counsel and copied Judge Hood, advising that I had attempted to speak to Judge Hood while at the courthouse, and asked for another status conference. **Exhibit N.** Both opposing counsel responded to, in essence, say they were leaving that up to Judge Hood. The following day, Judge Hood requested "proposed orders" from both defense counsel. **Exhibit O.** The directive provided no guidance as to how Judge Hood intended to rule. Both defense counsel later sent proposed orders to Judge Hood which, of course, ruled in favor of their respective clients without the benefit of Judge Hood having provided input as to what his ruling was going to be. **Exhibit P.**

There was another long period of silence, despite contacting Judge Hood in late August to resubmit all the previously submitted proposed orders. **Exhibit Q.** The signed orders were finally provided to all counsel of record on October 2, 2017, more than a month after they were apparently signed.

Until the merits hearing in this matter on June 6, 2017, Carpenter and his counsel were unaware that Judge Hood had previously served as a prosecutor for the statewide grand jury.<sup>5</sup> In retrospect, and with that knowledge, there seems to be an explanation for Judge Hood's efforts to directly advocate for the State and to protect his former employer. Carpenter's counsel can only assume that Judge Hood's reticence to meet or communicate with counsel for the parties after Carpenter accepted Judge Hood's proposal to grant habeas corpus to Carpenter in exchange for a full general release in favor of the State (which proposal was accepted by Carpenter) must have stemmed from Judge Hood's realization that he had stepped over the line in advocating for the State and proposing the deal which Carpenter accepted.

In his Petition for Original Jurisdiction filed with the Supreme Court, Carpenter's counsel briefly described Judge Hood's bizarre offer, and noted that we were submitting this complaint to your office.

Carpenter's counsel believed at all times that Judge Hood's proposed release in exchange for a grant of habeas corpus was likely improper.<sup>6</sup> See EAO 05-17.<sup>6</sup> However, after consulting with appropriate persons, Carpenter and his counsel consented to the proposal as made by Judge Hood because it would rapidly effectuate the ultimate and proper result in this action, which

<sup>5</sup> [http://www.sccourts.org/circuitCourt/displaycjr\\_judge.cfm?judgeid=2164](http://www.sccourts.org/circuitCourt/displaycjr_judge.cfm?judgeid=2164)

<sup>6</sup> That opinion, dated October 21, 2015, opined that a solicitor could NOT "use the criminal process to obtain a favorable result for a third party in a civil action (potential or actual) even if the solicitor has no direct involvement in the civil action."



Mr. John Nichols, Esquire  
In re: Circuit Court Judge Robert E. Hood  
March 23, 2018

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counsel has attempted to expedite from the outset. Nevertheless, I was so bothered by Judge Hood's actions that I consulted with Lee Coggiola, Disciplinary Counsel at the time, both immediately after the conference and then throughout Judge Hood's several months of silence between June and October 2017. Exhibits R through T. She agreed with me that I had to go along with the proposal for the benefit of my client, and to get him home safely first, before I reported Judge Hood to your office for investigation as to any misconduct.

We have documented this unfortunate series of events to the extent possible. Please let us know if you require anything further.

With warm personal regards, I am,

Sincerely yours,



Desa Ballard  
desab@desaballard.com

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<sup>7</sup> The initial, separate, habeas corpus pleading in the matter was captioned as "Petition for Writ of Habeas Corpus (expedited)." While no order was ever signed specifically designating the matter as expedited, the Chief Administrative Judge assisted with an expediting scheduling of hearings in the matter.

# EXHIBIT #2



State of South Carolina  
The Circuit Court of the Fifth Judicial Circuit

Robert E. Hood  
Judge

Post Office Box 192  
Columbia, SC 29202-0192

May 11, 2018

John Nichols, Esquire  
Office of Disciplinary Counsel  
P.O. Box 12159  
Columbia, S.C. 29211

Re: Matter Number 18-DE-J-0064

Dear Mr. Nichols:

This letter is my response to the allegations in the above mentioned matter.

This matter is not appropriate for litigation, and I would respectfully request that this matter be dismissed. Although Ms. Ballard alleges in her letter dated March 26, 2018 that I engaged in "judicial misconduct," she has failed to cite to any rule of Judicial Conduct that has been violated. Ms. Ballard's complaints are misplaced and no violation of the Judicial Conduct rules has occurred.

By way of background, Charles Carpenter, an inmate at SCDC, retained counsel to seek a writ of habeas corpus. I heard the civil non-jury case against the South Carolina Department of Corrections and the State of South Carolina on June 6, 2017. Prior to this hearing being scheduled, I had no knowledge of Mr. Carpenter or of his case. After the hearing, I requested a status conference with counsel. All counsel responded and confirmed the meeting on June 13, 2017. **Exhibit A.** Harvey Watson was present for Mr. Carpenter, Damon Wlodarczyk for SCDC, and Clay Mitchell for the Attorney General's Office. Ms. Ballard was not physically present, but attended by phone. My law clerk, Alexa Kluska, took notes on the matter. Ms. Kluska noted that I was giving the attorneys until the end of June to try to work the case out, and if there was no resolution, I was to rule the

following week. Ms. Kluska was going to touch base with the attorneys at the end of June if she did not hear anything from them. **Exhibit B.**

During this meeting, I suggested a resolution to the matter. I expressly informed counsel it was only a suggestion and they were free to accept or reject the resolution. I also gave them time to meet with their respective clients to discuss the proposed resolution. My suggested resolution to this civil case was that Mr. Carpenter be released from custody and he give up any claim he may have against the State or SCDC.

Turning to the allegations within the complaint, I expressly deny violating any provision of the Code of Judicial Conduct. I complied with these Canons, along with the other provisions of the Code of Judicial Conduct, during the entirety of the Charles Carpenter case.

The complaint alleges my intent to protect the State. I expressly deny it was my intent to protect the State. I offered a mutually beneficial resolution for the parties. In fact, the comments to Canon 3(B)(8) note that a judge should “should encourage and seek to facilitate settlement,” without coercing the parties into surrendering a right to have the controversy resolved. In this instance, that was my intent and exactly what happened. Additionally, there was no coercion of any kind. Following the status conference, Ms. Ballard emailed on June 26, 2017, stating that Mr. Carpenter agreed to the proposed resolution. At that time, she had not heard anything from the defense attorneys. **Exhibit C.**

Both defense counsel responded within minutes and indicated they were not agreeing to the proposed resolution. Ms. Ballard requested additional time “beyond today” to prepare an order. **Exhibit C.** Mr. Mitchell emailed another response on June 27, 2017, stating “I informed Desa that we will not consent to Mr. Carpenter’s release.” **Exhibit C.**

Ms. Ballard alleges that I “went silent.” I took the matter under advisement, which, under the law, I have authority to do and judges both in State and Federal court routinely take matters under advisement. Ms. Ballard had already submitted a proposed order. I instructed the attorneys for SCDC and the State to submit their proposed orders by July 24, 2017. **Exhibit D.** I received all orders by July 24, 2017. Once I took the matter under advisement, I reviewed over 200 pages of transcripts, the proposed orders, and held my regularly scheduled terms of court. Additionally, I was reviewing a 171 page proposed order for an unrelated PCR case that was extremely time consuming.

The complaint states on July 11, 2017, Ms. Ballard came to my courtroom. She opines about other attorneys' emotions and states irrelevant information about my guilty plea proceedings. She is correct that I did not allow for her to approach the bench for ex parte communication. Rule 501, SCACR, Code of Jud. Conduct, Canon 3 section (b)(7) clearly states, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." There are exceptions to the rule that do not apply to this circumstance. Ms. Ballard goes so far as to reference this attempted ex parte communication in an email with opposing counsel. **Exhibit E.** Therefore, I did not permit Ms. Ballard to engage in ex parte communication with me. She had no appointment, she had no case before me, and she randomly showed up to court for no other reason than ex parte communication.

After the incident with the attempted courtroom communication, Ms. Ballard requested a status conference on July 12, 2017. There was no need for a status conference. Defense counsel agreed there was no reason for a status conference and left that decision in my discretion. I confirm I did request proposed orders from both defense counsel, on July 12, 2017, because I had not yet decided the matter. Further, in regard to her statement that I did not give any guidance on how I may rule, it is in my discretion as to whether or not I inform counsel on how I will be ruling.

Ms. Ballard emailed me on August 28, 2017, inquiring about the status of the orders **Exhibit F.** Again on September 14, 2017, Ms. Ballard emailed me, "I am hoping to get this matter resolved." **Exhibit G.** She also requested another status conference. Again, there was no need for a status conference. The matter had been heard, the proposed orders had been submitted, and I was reviewing the transcripts, the proposed orders, and attempting to reach a decision.

I then signed the orders on September 14, 2017. Why the orders were not filed until October 2, 2017 is unknown to me. The complaint falsely states the signed orders were not provided until October 2, 2017 "more than a month later." September 14<sup>th</sup> to October 2<sup>nd</sup> is not more than a month later.

Ms. Ballard's office emailed Plaintiff's Motion to Reconsider on October 6, 2017, and the motion was then filed on October 10, 2017. On October 10, 2017, my law clerk emailed confirmation that my office received the motion and asked whether the defense would like an opportunity to respond. **Exhibit H.** Both responses in opposition to Plaintiff's Rule 59(e) motion were received by October 25, 2017. **Exhibit H.** On December 18, 2017, Ms. Ballard's office emailed about the status of the motion, and my law clerk replied within the hour with the Order on the Motion to Reconsider. **Exhibit I.**

Ms. Ballard also alleges within the complaint that Mr. Carpenter and his counsel were unaware that I had previously served as a prosecutor for the statewide grand jury. This is incorrect on several levels. The South Carolina Supreme Court in State vs. Earle Morris, 376 S.C. 189, 656 S.E. 2d 359 (2008), found the trial court did not err in excluding the testimony of Appellant's expert in legal ethics and conflicts of interest. The potential expert in State v. Morris was in fact Ms. Ballard. I served as a prosecutor for the State Grand Jury on that case and actually handled this legal issue before Judge James Johnson arguing successfully that her testimony should be excluded. Ms. Ballard either knew or should have known since the fall of 2004 (Mr. Morris' trial) that I was employed by the South Carolina Attorney General as a State Grand Jury prosecutor. Additionally, both the public court website profile and the South Carolina Legislative Manual list my former employment<sup>1</sup>. Ms. Ballard's assumptions about my advocating for the State are baseless, offensive, and not supported by the facts. Additionally, there were no facts or circumstances present in this case that would require disqualification pursuant to Canon 3(E).

Lastly, in the complaint, Ms. Ballard alleges my proposed release in exchange for a grant of habeas corpus is likely improper. This is a false accusation. The law cited is in reference to a criminal not a civil matter.

In conclusion, this complaint is without merit. As always, I did my level best to adhere to the Code of Judicial Conduct at every stage of this proceeding, and perform my judicial duties impartially and fairly.

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<sup>1</sup> <http://www.sccourts.org/circuitCourt/displaycirjudge.cfm?judgeid=2164>

Sincerely,

A handwritten signature in black ink that reads "Re Hood". The "R" is large and stylized, and the "E" is written as a simple horizontal line.

Robert E. Hood

# EXHIBIT A



## **Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Hood, Robert E. Law Clerk (Alexa Kluska)  
**Sent:** Monday, June 12, 2017 3:13 PM  
**To:** Desa Ballard; Damon Wlodarczyk; Clay Mitchell  
**Cc:** Mara Ballard; Beth Cogan; Beth Cogan; Mara Ballard; Monique Trifos; Beth Cogan; Mara Ballard  
**Subject:** RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Judge Hood would like to schedule this tomorrow at 10. He is fine with Ms. Ballard's partner coming to chambers and phone conferencing her in. Everyone else, if you could please call me from the clerk's office on the second floor of the Richland County courthouse when everyone is present, I will escort you back to chambers.

Thank you so much, and please let me know if you have any questions.

Alexa

-----Original Message-----

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Monday, June 12, 2017 1:51 PM  
**To:** Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Clay Mitchell <CMitchell@scag.gov>  
**Cc:** Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Monique Trifos <mtrifos@rplfirm.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
**Subject:** RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Beth (our paralegal) called and gave Alexa our schedule, so we are just waiting to hear when.

db

-----Original Message-----

**From:** Damon Wlodarczyk [mailto:damonW@rplfirm.com]  
**Sent:** Monday, June 12, 2017 11:40 AM  
**To:** Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>  
**Cc:** Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>; Monique Trifos <mtrifos@rplfirm.com>  
**Subject:** RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

I am available tomorrow until 1:00 p.m., Thursday after 12:00 and Friday anytime.

Thank you,

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
Riley Pope & Laney, LLC

notify us by return email and destroy any copies - electronic, paper or otherwise - which you may have of this communication.

-----Original Message-----

From: Hood, Robert E. Law Clerk (Alexa Kluska) [mailto:rhooldc@sccourts.org]  
Sent: Monday, June 12, 2017 11:36 AM  
To: Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>  
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Good morning,

Judge Hood would like to schedule a time this week to discuss this case in chambers. He is available tomorrow, Wednesday morning, Thursday, and Friday morning.

Please let me know what works best for each of you and I will get it scheduled. Thank you,

Alexa

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]  
Sent: Tuesday, May 30, 2017 3:30 PM  
To: Clay Mitchell <CMitchell@scag.gov>; Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhooldc@sccourts.org>  
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Mr. Wlodarczyk's paralegal advises my paralegal that Mr. Wlodarczyk is available Thursday morning. As I understand it, Mr. Mitchell is also available Thursday morning.

db

-----Original Message-----

From: Clay Mitchell [mailto:CMitchell@scag.gov]  
Sent: Tuesday, May 30, 2017 3:24 PM  
To: Desa Ballard <desab@desaballard.com>; Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhooldc@sccourts.org>  
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Alexa,

My conflicts are both in general sessions. Tomorrow's hearing is scheduled before Judge Verdin. It is scheduled along with a dozen other motions to be heard in the morning. On Friday, Judge Harrington has scheduled motions along with status conferences on multiple cases I'm handling. I also don't have anyone who can cover these other matters for me. Applying Rule 601, SCACR, these general sessions matters take precedent over this matter (CPNJ).

I can provide further information or documentation if Judge Hood would like. Thank you.

Clay

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]

Sent: Tuesday, May 30, 2017 2:54 PM

To: Damon Wlodarczyk; Hood, Robert E. Law Clerk (Alexa Kluska); Clay Mitchell; Beth Cogan

Cc: Mara Ballard; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Alexa:

Attached are Rosters for Berkley and Greenville. Unless I missed them, I am unable to locate any CPNJ involving the AG's office in either county this week. I would ask again that Rule 601, SCACR, be applied.

db

-----Original Message-----

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]

Sent: Tuesday, May 30, 2017 2:49 PM

To: Desa Ballard <desab@desaballard.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Clay Mitchell <CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com>

Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

I'm unavailable Thursday or Friday. I am available next week, Wednesday morning and all day Thursday.

Thank you,

Damon C. Wlodarczyk

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

Office: 803-799-9993

Facsimile: 803-239-1414

E-mail: damonw@rplfirm.com

Web: [https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A\\_\\_na01.safelinks.protection.outlook.com\\_-3Furl-3Dwww.rplfirm.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257Ce35a84a4b36c40dc871f08d4a78c8fbd-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-257C0-257C636317669555586812-26sdata-3D5VCU6xLk4a2X8sAPa39wqE8ex72d0TdZ39f6hfFK0YU-253D-26reserved-3D0%26d%3DDwIFAw%26c%3DYGvVmrQQ6VQOFx3Z93C9uQ%26r%3Ddu0BJmkaThi\\_2ycueFs0Nko7e\\_ScPC0ZiawG819X](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dwww.rplfirm.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257Ce35a84a4b36c40dc871f08d4a78c8fbd-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-257C0-257C636317669555586812-26sdata-3D5VCU6xLk4a2X8sAPa39wqE8ex72d0TdZ39f6hfFK0YU-253D-26reserved-3D0%26d%3DDwIFAw%26c%3DYGvVmrQQ6VQOFx3Z93C9uQ%26r%3Ddu0BJmkaThi_2ycueFs0Nko7e_ScPC0ZiawG819X)

Txs%26m%3DKbsgCOqaGGnvckPOSp1U19crfd\_sr\_jStGlWLEr3Kc%26s%3DMHNEPKIGZmT7ZUte2nbAZcnwBdH3HqJUw  
W0A4Pmz6Zg%26e&data=02%7C01%7Cdesab%40desaballard.com%7C1aef3ce8ecc247cad1cf08d4b1a94120%7C6b7ce  
b12d1f2465da7a745b658c1488e%7C0%7C0%7C636328787882473563&sdata=NFef3le68A78yz1hVElifaJOHZojXjnjqGff  
tEziHo%3D&reserved=0=

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-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]  
Sent: Tuesday, May 30, 2017 1:07 PM  
To: Damon Wlodarczyk <damonW@rplfirm.com>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Clay Mitchell <CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com>  
Cc: Mara Ballard <Mara@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Damon, are you unavailable all day on Thursday or Friday? Or just the mornings?

Clay, are you not available tomorrow afternoon (is your other matter an all-day matter)?

db

-----Original Message-----

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]  
Sent: Tuesday, May 30, 2017 12:48 PM  
To: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; Desa Ballard <desab@desaballard.com>; Clay Mitchell <CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com>  
Cc: Mara Ballard <Mara@desaballard.com>  
Subject: Re: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Ms. Kluska:

I just got to my computer and went through the e-mail chain. Mr. Mitchell's presence slipped my mind until I contacted SCDC about the change in date and it was mentioned. I am not available Thursday or Friday of this week. I am available all day Wednesday.

Thank you,

Damon

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
Riley Pope & Laney, LLC  
2838 Devine Street

Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: [damonw@rplfirm.com](mailto:damonw@rplfirm.com)<<mailto:damonw@rplfirm.com>>  
Web:

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From: "Hood, Robert E. Law Clerk (Alexa Kluska)" <[rhoodlc@sccourts.org](mailto:rhoodlc@sccourts.org)<<mailto:rhoodlc@sccourts.org>>>

Date: Tuesday, May 30, 2017 at 11:59 AM

To: Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)<<mailto:desab@desaballard.com>>>, Clay Mitchell

<[CMitchell@scag.gov](mailto:CMitchell@scag.gov)<<mailto:CMitchell@scag.gov>>>, Beth Cogan

<[Beth@desaballard.com](mailto:Beth@desaballard.com)<<mailto:Beth@desaballard.com>>>, Damon Wlodarczyk

<[damonw@rplfirm.com](mailto:damonw@rplfirm.com)<<mailto:damonw@rplfirm.com>>>

Cc: Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)<<mailto:Mara@desaballard.com>>>

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Is everyone available on Thursday?

From: Desa Ballard [<mailto:desab@desaballard.com>]

Sent: Tuesday, May 30, 2017 11:54 AM

To: Hood, Robert E. Law Clerk (Alexa Kluska) <[rhoodlc@sccourts.org](mailto:rhoodlc@sccourts.org)<<mailto:rhoodlc@sccourts.org>>>; Clay Mitchell

<[CMitchell@scag.gov](mailto:CMitchell@scag.gov)<<mailto:CMitchell@scag.gov>>>; Beth Cogan

<[Beth@desaballard.com](mailto:Beth@desaballard.com)<<mailto:Beth@desaballard.com>>>; Damon Wlodarczyk

<[damonW@rplfirm.com](mailto:damonW@rplfirm.com)<<mailto:damonW@rplfirm.com>>>

Cc: Mara Ballard <Mara@desaballard.com<mailto:Mara@desaballard.com>>  
Subject: Re: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

I didn't think of it. I thought the call was going to be to discuss motions, which only involved Damon and me. I apologize. I can do this anytime. I have cleared my schedule. I will be available anytime.

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: "Hood, Robert E. Law Clerk (Alexa Kluska)" <rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>>  
Date: 5/30/17 11:46 AM (GMT-05:00)  
To: Clay Mitchell <CMitchell@scag.gov<mailto:CMitchell@scag.gov>>, Desa Ballard <desab@desaballard.com<mailto:desab@desaballard.com>>, Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>, Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>  
Cc: Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>, Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

All-

Judge Hood would like to know why he wasn't informed during the previous conference call that Mr. Mitchell needed to be present. I currently have the transport order from Ms. Ballard's paralegal for the Judge to sign, but I am not sure he should sign it now if the case can't go forward tomorrow.

Thanks,

Alexa

-----Original Message-----

From: Clay Mitchell [mailto:CMitchell@scag.gov]  
Sent: Tuesday, May 30, 2017 11:40 AM  
To: Desa Ballard <desab@desaballard.com<mailto:desab@desaballard.com>>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>  
Cc: Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Alexa and Desa,

I'm not available tomorrow. I have a matter in Greenville. I'm available Thursday.

I'm also available for a conference call now on my cell at 803.309.3583.

Clay

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]  
Sent: Tuesday, May 30, 2017 11:20 AM  
To: Hood, Robert E. Law Clerk (Alexa Kluska); Beth Cogan; Damon Włodarczyk; Clay Mitchell  
Cc: Beth Cogan; Mara Ballard  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

My paralegal, Beth Cogan, is on her way to Judge Hood's office with a transport order form 9:30 am tomorrow. We will let the transport folks know to expect it.

Thank you.

db

-----Original Message-----

From: Hood, Robert E. Law Clerk (Alexa Kluska) [mailto:rhoodlc@sccourts.org]  
Sent: Tuesday, May 30, 2017 11:09 AM  
To: Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Damon Włodarczyk <damonW@rplfirm.com<mailto: damonW@rplfirm.com>>; CMitchell@scag.gov<mailto: CMitchell@scag.gov>  
Cc: Desa Ballard <desab@desaballard.com<mailto: desab@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Thank you for the information. Are both attorneys available? Judge Hood would like a conference call with both sides.

-----Original Message-----

From: Beth Cogan [mailto: Beth@desaballard.com]  
Sent: Tuesday, May 30, 2017 11:07 AM  
To: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org<mailto: rhoodlc@sccourts.org>>; Damon Włodarczyk <damonW@rplfirm.com<mailto: damonW@rplfirm.com>>; CMitchell@scag.gov<mailto: CMitchell@scag.gov>  
Cc: Desa Ballard <desab@desaballard.com<mailto: desab@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Good morning,  
We just received confirmation that Mr. Carpenter was NOT transported today.  
Kindest Regards,  
-Beth

Beth Cogan, Paralegal  
Ballard & Watson, Attorneys at Law  
Post Office Box 6338  
West Columbia, South Carolina 29169  
803.796.9299  
803.796.1066 Facsimile  
beth@desaballard.com<mailto: beth@desaballard.com>  
[https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv%2Furl%3Fu%3Dhttps-3A\\_\\_na01.safelinks.protection.outlook.com\\_-3Furl-3Dwww.desaballard.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257C4daad2a70bdb4caf378108d4a76dd21a-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv%2Furl%3Fu%3Dhttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dwww.desaballard.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257C4daad2a70bdb4caf378108d4a76dd21a-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-)

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Laf87xpm9w8gMTS7QHeDgJPvyTo0%26e&data=02%7C01%7Cdesab%40desaballard.com%7Cfcf9c102b60b420d10a608  
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HJhGakMmkn5puiFSpWwqDOMli9Y%3D&reserved=0=

-----Original Message-----

From: Desa Ballard  
Sent: Tuesday, May 30, 2017 10:22 AM  
To: Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>>; Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>  
Cc: CMitchell@scag.gov<mailto:CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>; Harvey Watson <harvey@desaballard.com<mailto: harvey@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

We are now being told that Mr. Carpenter "might" be on his way. Will keep everyone posted.

db

-----Original Message-----

From: Desa Ballard  
Sent: Tuesday, May 30, 2017 10:01 AM  
To: 'Hood, Robert E. Law Clerk (Alexa Kluska)' <rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>>; Damon Wlodarczyk <damonW@rplfirm.com<mailto: damonW@rplfirm.com>>  
Cc: CMitchell@scag.gov<mailto:CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>; Harvey Watson <harvey@desaballard.com<mailto: harvey@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>  
Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Jenny:

You just called and we tried to get Damon on the phone. My paralegal reminded me that Damon had a hearing in Greenwood this morning at 9:30 and that's why we had planned to start at 1:00 pm.



We have learned, this morning, that a transport order was not done (we were working with Anne Henley, not sure what got messed up) and Mr. Carpenter is not here. The earliest they can get him here is tomorrow.

I suggested we come over at 1 pm and do a status conference with Judge Hood, and perhaps hear the motions, and if Judge Hood can hear the merits anytime this week (one-half day was set aside) we can have Mr. Carpenter here by tomorrow. The matter is expedited, and everything that can go wrong so far has gone wrong, so we really want to have the merits hearing ASAP.

I will stand by for your return call.

Thanks

db

-----Original Message-----

From: Hood, Robert E. Law Clerk (Alexa Kluska) [mailto:rhodlc@sccourts.org]

Sent: Thursday, May 25, 2017 1:17 PM

To: Desa Ballard <desab@desaballard.com<mailto:desab@desaballard.com>>; Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>; Newman, Jocelyn Law Clerk (Christopher Campbell) <jnewmanlc@sccourts.org<mailto:jnewmanlc@sccourts.org>>

Cc: CMitchell@scag.gov<mailto:CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Monique Trifos <mtrifos@rplfirm.com<mailto:mtrifos@rplfirm.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Good afternoon,

Per information from Judge Benjamin's clerk, this trial will take place in front of Judge Hood. He is fine with starting at 1 pm on Tuesday. Please let me know if there are any matters that need to be sent to Judge Hood prior to trial.

Thank you so much and don't hesitate to let me know if you have any other questions or concerns.

Alexa

-----Original Message-----

From: Desa Ballard [mailto:desab@desaballard.com]

Sent: Wednesday, May 24, 2017 11:15 AM

To: Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>; Hood, Robert E. Law Clerk (Alexa Kluska) <rhodlc@sccourts.org<mailto:rhodlc@sccourts.org>>; Newman, Jocelyn Law Clerk (Christopher Campbell) <jnewmanlc@sccourts.org<mailto:jnewmanlc@sccourts.org>>

Cc: CMitchell@scag.gov<mailto:CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Monique Trifos <mtrifos@rplfirm.com<mailto:mtrifos@rplfirm.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Beth Cogan <Beth@desaballard.com<mailto: Beth@desaballard.com>>; Mara Ballard <Mara@desaballard.com<mailto: Mara@desaballard.com>>

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Subject: RE: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

Hi, it's Desa Ballard, I represent the Plaintiff. Judge Benjamin was not sure, when she set the date certain, whether trial would be with Judge Hood or with Judge Newman.

I have no request to Damon's request to start at 1:00 p.m.

Thanks so much.

db

-----Original Message-----

From: Damon Wlodarczyk [mailto:damonw@rplfirm.com]

Sent: Wednesday, May 24, 2017 11:10 AM

To: rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>; jnewmanlc@sccourts.org<mailto:jnewmanlc@sccourts.org>

Cc: Desa Ballard <desab@desaballard.com<mailto:desab@desaballard.com>>;

CMitchell@scag.gov<mailto:CMitchell@scag.gov>; Beth Cogan

<Beth@desaballard.com<mailto: Beth@desaballard.com>>; Monique Trifos

<mtrifos@rplfirm.com<mailto:mtrifos@rplfirm.com>>

Subject: FW: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

I would appreciate if the following message is forwarded to Judge Hood and Judge Newman for their consideration.

Following a status conference with Judge Benjamin on May 18, 2017, the above petition for habeas corpus and declaratory judgment action was set for a day certain bench trial for Tuesday, May 30, 2017, beginning at 1:00 p.m. The parties were informed that the trial judge will either be Judge Hood or Judge Newman. The reason for the 1:00 p.m. start time is that I have a motion hearing previously scheduled at 9:30 a.m. in Greenwood County. I wanted to confirm this with the court as I will be out of the office beginning Thursday afternoon for the holiday weekend.

Thank you,

Damon

Damon C. Wlodarczyk

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

Office: 803-799-9993

Facsimile: 803-239-1414

E-mail: damonw@rplfirm.com<mailto:damonw@rplfirm.com>

Web:

[https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv%2Furl%3Fu%3Dhttps-3A\\_\\_na01.safelinks.protection.outlook.com\\_-3Furl-3Dwww.rplfirm.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257Ca3654a3dd2f4458c5b3908d4a2b6f71a-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-257C0-257C636312354103227669-26sdata-3DPPomoCJ8e4xaAy2gWuDjHO1geV38uf49DWGgZKH6vOM-253D-26reserved-3D0%26d%3DDwIFAw%26c%3DYGv/mrQQ6VQOFx3Z93C9uQ%26r%3Ddu0BJmkaThi\\_2ycueFs0Nko7e\\_ScPC0ZiawG819XTxs%26m%3DHXTbJZ8vv6cuzocXGeXPkItWX2mljPsMe2zAGMoBqxk%26s%3DuEfgzCPvGnAOijH3ISSycYP-](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv%2Furl%3Fu%3Dhttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dwww.rplfirm.com-26data-3D02-257C01-257Cdesab-2540desaballard.com-257Ca3654a3dd2f4458c5b3908d4a2b6f71a-257C6b7ceb12d1f2465da7a745b658c1488e-257C0-257C0-257C636312354103227669-26sdata-3DPPomoCJ8e4xaAy2gWuDjHO1geV38uf49DWGgZKH6vOM-253D-26reserved-3D0%26d%3DDwIFAw%26c%3DYGv/mrQQ6VQOFx3Z93C9uQ%26r%3Ddu0BJmkaThi_2ycueFs0Nko7e_ScPC0ZiawG819XTxs%26m%3DHXTbJZ8vv6cuzocXGeXPkItWX2mljPsMe2zAGMoBqxk%26s%3DuEfgzCPvGnAOijH3ISSycYP-)

H0xPSQbOHw8BW0JQ4I4%26e&data=02%7C01%7Cdesab%40desaballard.com%7C4916ea9fb9784e1f031708d4a391cb6d%7C6b7ceb12d1f2465da7a745b658c1488e%7C0%7C0%7C636313293980139077&sdata=pK96AReB8DQg%2F2qgEs18WWnstME5AkMRnoyKTHbiWYg%3D&reserved=0=

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-----Original Message-----

From: RichlandRostersNOREPLY@rcgov.us<mailto:RichlandRostersNOREPLY@rcgov.us>  
[mailto:RichlandRostersNOREPLY@rcgov.us]  
Sent: Friday, May 19, 2017 10:20 AM  
To: Damon Wlodarczyk <damonW@rplfirm.com<mailto:damonW@rplfirm.com>>  
Cc: henleya@rcgov.us<mailto:henleya@rcgov.us>  
Subject: Case 2016CP4006916-Charles Eugene Carpenter vs South Carolina Department Of Corrections added to Court Roster for period 2017-05-30 through 2017-06-02.

A roster meeting will be held on Tuesday May 30, 2017 at 9:00 AM before Judge DeAndrea G. Benjamin in Courtroom 2-C. This is a backup docket to the Jury Trial Roster. ALL cases on this Roster are subject to trial. ATTENDANCE AT THE ROSTER MEETING IS MANDATORY. PLEASE NOTIFY THE COURT IN WRITING IF YOUR CASE IS SETTLED. Failure to appear or send a representative on your behalf may result in dismissal of the case.

Any request for a continuance is considered a motion and requires a \$25.00 Motion fee, which must be paid at the time of the request. If a Status Conference is necessary or would be helpful, please contact my office by email (dbenjaminlc@sccourts.org<mailto:dbenjaminlc@sccourts.org>).

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# EXHIBIT B

1. Charles Carpenter Decision

~~\*~~  
held  
RET 7/10  
not old  
date 11/2

This is the habeus corpus hearing with Desa Ballard/ Damon W./ Clay Mitchell. He is giving them until the end of June to try to work it out, if not he will rule the following week. I would touch base with the attorneys at the end of June if you do not hear anything from them.

BCP Orders

# EXHIBIT C

✓  
**Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Clay Mitchell <CMitchell@scag.gov>  
**Sent:** Tuesday, June 27, 2017 4:12 PM  
**To:** Desa Ballard; Hood, Robert E. Secretary (Jennifer S. Smith); Hood, Robert E. Law Clerk ()  
**Cc:** Harvey Watson; Damon Wlodarczyk; Beth Cogan; Beth Cogan; Mara Ballard  
**Subject:** RE: Charles Carpenter v. State, Case No. 2016-CP-40-6916

Judge Hood and Ms. Smith,

I informed Desa that we will not consent to Mr. Carpenter's release. It's our position that the conviction and sentence are valid and that his constitutional rights have not been violated. This wasn't meant to be a carefully worded response. We cannot agree to the proposal and do respectfully object to it.

I believe Damon is on vacation and may not be checking his email, but it's my understanding that SCDC shares our position.

Thank you.

Clay

---

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Monday, June 26, 2017 2:02 PM  
**To:** Hood, Robert E. Secretary (Jennifer S. Smith)  
**Cc:** Harvey Watson; Damon Wlodarczyk; Clay Mitchell; Beth Cogan; Beth Cogan; Mara Ballard  
**Subject:** FW: Charles Carpenter v. State, Case No. 2016-CP-40-6916

We sent this to Judge Hood and his law clerk around noon. We got a bounce back that the law clerk has gone and the new one won't be in for a while. So I am forwarding this to you too, to assist in directing it to Judge Hood's attention.

Thanks so much.

Desa Ballard

---

**From:** Desa Ballard  
**Sent:** Monday, June 26, 2017 12:02 PM  
**To:** Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>; 'rhood@sccourts.org' <rhood@sccourts.org>  
**Cc:** 'Damon Wlodarczyk' <damonW@rplfirm.com>; Clay Mitchell <CMitchell@scag.gov>; Beth Cogan <Beth@desaballard.com>; Mara Ballard <Mara@desaballard.com>  
**Subject:** Charles Carpenter v. State, Case No. 2016-CP-40-6916

Judge Hood:

Following our status conference on June 13, 2017, we reached Mr. Carpenter directly by phone, and he agreed to your proposed resolution of the case in principal. At 4:14 PM that same day, I emailed defense counsel and advised them of Mr. Carpenter's indicated consent. I also advised I would begin preparing documents that would effectuate the resolution you suggested. Exhibit A. We heard

# EXHIBIT D



**Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Clay Mitchell <CMitchell@scag.gov>  
**Sent:** Monday, July 24, 2017 4:19 PM  
**To:** Desa Ballard; Damon Wlodarczyk; Hood, Robert E.; Hood, Robert E. Secretary (Jennifer S. Smith); Hood, Robert E. Law Clerk ()  
**Cc:** Harvey Watson; Beth Cogan; Mara Ballard; Monique Trifos; Beth Cogan; Mara Ballard  
**Subject:** RE: Carpenter v. State  
**Attachments:** Proposed Order of Dismissal (01403874xD2C78).DOCX

Judge Hood,

I've attached the State's proposed order. It is in word format for your convenience. Please let me know if you have any questions or concerns. Thanks.

Clay

---

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Friday, July 21, 2017 2:40 PM  
**To:** Damon Wlodarczyk; Hood, Robert E.; Hood, Robert E. Secretary (Jennifer S. Smith); Hood, Robert E. Law Clerk (Alexa Kluska)  
**Cc:** Clay Mitchell; Harvey Watson; Beth Cogan; Mara Ballard; Monique Trifos; Beth Cogan; Mara Ballard  
**Subject:** RE: Carpenter v. State

Judge Hood:

My partner Harvey Watson and I are both out next week (him on vacation, me on other client matters). I'm not sure if you wanted a response from us as to the content of the proposed orders from SCDC and AG, but if you did please accept this e mail as our objection to the proposed orders from both defendants (only one of which we have received so far). We do not want any more delays if possible.

If you need a response before then, please incorporate all of our prior arguments, including our client's agreement to the proposal made by you (release of our client from custody in exchange for full release of defendants and no future suit against them) and our client's execution of a release in favor of the defendants. A copy is attached and was provided to defense counsel on June 16, 2017.

We have sent two (2) proposed orders for rulings in Mr. Carpenter's, both of which were submitted after the proposal in the pretrial hearing of June 13, 2017. The most recent proposed order (on the merits) is attached for your consideration.

Should you deny the relief we are requesting, we will ask for an expedited consideration of our Rule 59(e) motion so that our appeal can be filed immediately.

Thank you.

db

**From:** Damon Wlodarczyk [<mailto:damonW@rplfirm.com>]  
**Sent:** Friday, July 21, 2017 11:43 AM  
**To:** Hood, Robert E. <[rhoodj@sccourts.org](mailto:rhoodj@sccourts.org)>; Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Hood, Robert E. Law Clerk (Alexa Kluska) <[rhoodlc@sccourts.org](mailto:rhoodlc@sccourts.org)>  
**Cc:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>; Clay Mitchell <[CMitchell@scag.gov](mailto:CMitchell@scag.gov)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>; Monique Trifos <[mtrifos@rplfirm.com](mailto:mtrifos@rplfirm.com)>  
**Subject:** RE: Carpenter v. State

Dear Judge Hood:

Please find attached a proposed Order as to the claims against SCDC. Please let me know if anything else is needed on behalf of SCDC.

Respectfully submitted,

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
**Riley Pope & Laney, LLC**  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
Web: [www.rplfirm.com](http://www.rplfirm.com)

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**From:** Hood, Robert E. [<mailto:rhoodj@sccourts.org>]  
**Sent:** Thursday, July 13, 2017 10:07 AM  
**To:** Clay Mitchell <[CMitchell@scag.gov](mailto:CMitchell@scag.gov)>; Damon Wlodarczyk <[damonW@rplfirm.com](mailto:damonW@rplfirm.com)>; Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>  
**Cc:** Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>  
**Subject:** RE: Carpenter v. State

Proposed Orders from the State/SCDC are due by July 24, 2017. If you guys want to submit one that is fine with me. REH

**From:** Clay Mitchell [<mailto:CMitchell@scag.gov>]  
**Sent:** Thursday, July 13, 2017 8:44 AM  
**To:** Damon Wlodarczyk <[damonW@rplfirm.com](mailto:damonW@rplfirm.com)>; Hood, Robert E. <[rhoodj@sccourts.org](mailto:rhoodj@sccourts.org)>; Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>  
**Cc:** Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>

Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>

**Subject:** RE: Carpenter v. State

Judge Hood,

I'd ask to have until next Friday, the 21<sup>st</sup>. I have a trial going forward next week and won't have much time to work on it. Thank you.

Clay

---

**From:** Damon Wlodarczyk [<mailto:damonW@rplfirm.com>]

**Sent:** Wednesday, July 12, 2017 1:30 PM

**To:** Hood, Robert E.; Desa Ballard; Clay Mitchell

**Cc:** Hood, Robert E. Secretary (Jennifer S. Smith); Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard

**Subject:** RE: Carpenter v. State

I would appreciate having until next Wednesday to prepare a proposed Order for SCDC.

Thank you,

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
**Riley Pope & Laney, LLC**  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
Web: [www.rplfirm.com](http://www.rplfirm.com)

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---

**From:** Hood, Robert E. [<mailto:rhoodj@sccourts.org>]

**Sent:** Wednesday, July 12, 2017 1:07 PM

**To:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>; Clay Mitchell <[CMitchell@scag.gov](mailto:CMitchell@scag.gov)>; Damon Wlodarczyk <[damonW@rplfirm.com](mailto:damonW@rplfirm.com)>

**Cc:** Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>;

Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>;

Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>

**Subject:** RE: Carpenter v. State

SCDC and the Attorney General's office are hereby requested to send proposed orders to me for consideration. Please ensure that Ms. Ballard is copied on the proposed orders. Mr. Mitchell and Mr. Wlodarczyk, please let me know how long you need to prepare proposed orders.

No status conference is necessary at this time.

# EXHIBIT E

Thank you, REH

**From:** Desa Ballard [<mailto:desab@desaballard.com>]

**Sent:** Wednesday, July 12, 2017 9:07 AM

**To:** Clay Mitchell <[CMitchell@scag.gov](mailto:CMitchell@scag.gov)>; [damonW@rplfirm.com](mailto:damonW@rplfirm.com)

**Cc:** Hood, Robert E. <[rhoodj@sccourts.org](mailto:rhoodj@sccourts.org)>; Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan

<[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Mara Ballard

<[Mara@desaballard.com](mailto:Mara@desaballard.com)>

**Subject:** RE: Carpenter v. State

We received a message from Judge Hood's office to request a status conference. I had already sent the email below, so I believe I have done as requested.

In case I was not clear, I would like a status conference.

Desa Ballard

**From:** Clay Mitchell [<mailto:CMitchell@scag.gov>]

**Sent:** Wednesday, July 12, 2017 8:58 AM

**To:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>; [damonW@rplfirm.com](mailto:damonW@rplfirm.com)

**Cc:** Robert Hood <[rhoodj@sccourts.org](mailto:rhoodj@sccourts.org)>; Hood, Robert E. Secretary (Jennifer S. Smith) <[rhoodsc@sccourts.org](mailto:rhoodsc@sccourts.org)>; Harvey Watson <[harvey@desaballard.com](mailto:harvey@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>;

Mara Ballard <[Mara@desaballard.com](mailto:Mara@desaballard.com)>

**Subject:** RE: Carpenter v. State

We will defer to Judge Hood.

Clay

**From:** Desa Ballard [<mailto:desab@desaballard.com>]

**Sent:** Tuesday, July 11, 2017 1:29 PM

**To:** [damonW@rplfirm.com](mailto:damonW@rplfirm.com); Clay Mitchell

**Cc:** Robert Hood; Hood, Robert E. Secretary (Jennifer S. Smith); Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard

**Subject:** Carpenter v. State

I was at the courthouse today on another matter and I went to Judge Hood's courtroom, hoping to pick up the order to file with the clerk's office. As he adjourned, I asked to approach the bench (hoping to pick up the order to which no one has objected) but the judge denied my request to approach.

Perhaps he was concerned about ex parte communications. For that reason, I am asking another status conference so we can attempt to resolve this matter. We are now almost one month post the June 13, 2017 status conference at which the proposal was made for a release, and the release signed by Mr. Carpenter was delivered to defense counsel on June 16, 2017.

Do defendants agree to a status conference?

Desa Ballard

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# EXHIBIT F

**Hood, Robert E. Law Clerk (Bailey Davis)**

---



**From:** Desa Ballard <desab@desaballard.com>  
**Sent:** Monday, August 28, 2017 4:15 PM  
**To:** Hood, Robert E.; Hood, Robert E. Law Clerk (Bailey Davis); Hood, Robert E. Secretary (Jennifer S. Smith)  
**Cc:** CMitchell@scag.gov; Damon Włodarczyk; Harvey Watson; Beth Cogan; Mara Ballard  
**Subject:** Charles Carpenter v. State, Case No. 2016-CP-40-6916  
**Attachments:** Proposed Order of Dismissal (01403874xD2C78).DOCX; Carpenter Order.proposed.doc; Ltr to Judge Hood encl proposed order 6.30.17.docx; Order Granting Habeas Corpus (merits).pdf

Dear Judge Hood:

On behalf of Charles Carpenter, I am inquiring as to the status of receiving an order in this case. We sent you proposed orders on several occasions, and both defendants have sent you proposed orders. Our most recent proposed orders and the proposed orders from defendants are attached for your review.

Please advise.

Thank you.

Desa Ballard

# EXHIBIT G





**Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Desa Ballard <desab@desaballard.com>  
**Sent:** Thursday, September 14, 2017 1:48 PM  
**To:** Hood, Robert E.; Hood, Robert E. Secretary (Jennifer S. Smith); Hood, Robert E. Law Clerk (Bailey Davis)  
**Cc:** damonw@rplfirm.com; CMitchell@scag.gov; Harvey Watson; Beth Cogan; Beth Cogan; Mara Ballard  
**Subject:** Charles Carpenter (habeas corpus)

Judge Hood:

I am hoping we can get this matter resolved. Would another status conference assist you in any way in concluding this matter?

Desa Ballard

# EXHIBIT H

**Hood, Robert E. Law Clerk (Bailey Davis)**



**From:** Damon Wlodarczyk <damonW@rplfirm.com>  
**Sent:** Wednesday, October 11, 2017 8:53 AM  
**To:** cmitchell@scag.gov; desab@desaballard.com; Hood, Robert E. Law Clerk (Bailey Davis)  
**Subject:** Re: Charles Carpenter v. SCDC, et. al. 2016-CP-40-6916 Plaintiff's Motion to Reconsider

Can I have until Wednesday of next week to file a response on behalf of SCDC?

Thank you,

(Sent from mobile device)

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
Riley Pope & Laney, LLC  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: damonw@rplfirm.com  
Web: www.rplfirm.com<http://www.rplfirm.com>

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On Tue, Oct 10, 2017 at 4:42 PM -0400, "Hood, Robert E. Law Clerk (Bailey Davis)" <rhoodlc@sccourts.org<mailto:rhoodlc@sccourts.org>> wrote:

Good afternoon,

Judge Hood's Office has received the Plaintiff's Motion to Reconsider. Would the Defense like to respond?

Thanks,

C Bailey Davis  
Law Clerk to the  
Honorable Robert E. Hood  
Circuit Court Judge  
Fifth Judicial Circuit  
Richland County Judicial Center  
1701 Main Street  
Post Office Box 192  
Columbia, SC 29202-0192

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**Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Clay Mitchell <CMitchell@scag.gov>  
**Sent:** Wednesday, October 25, 2017 4:07 PM  
**To:** Hood, Robert E. Law Clerk (Bailey Davis); Damon Wlodarczyk; desab@desaballard.com; Harvey Watson; Beth Cogan  
**Subject:** RE: Charles Carpenter v. SCDC, et. al. 2016-CP-40-6916 Plaintiff's Motion to Reconsider  
**Attachments:** CARPENTER Charles - Letter sending Return to Petitioner's Motion to Reco....pdf; CARPENTER Charles - Return to Petitioner's Motion to Reconsider (0150944....pdf)

Bailey,

I've attached our return to the motion to reconsider. Thank you.

Clay

-----Original Message-----

**From:** Hood, Robert E. Law Clerk (Bailey Davis) [mailto:rhoodlc@sccourts.org]  
**Sent:** Wednesday, October 11, 2017 11:44 AM  
**To:** Damon Wlodarczyk; Clay Mitchell; desab@desaballard.com  
**Subject:** RE: Charles Carpenter v. SCDC, et. al. 2016-CP-40-6916 Plaintiff's Motion to Reconsider

Good morning,  
Next Wednesday will work.  
Thanks!  
Bailey Davis

-----Original Message-----

**From:** Damon Wlodarczyk [mailto:damonW@rplfirm.com]  
**Sent:** Wednesday, October 11, 2017 8:53 AM  
**To:** cmitchell@scag.gov; desab@desaballard.com; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>  
**Subject:** Re: Charles Carpenter v. SCDC, et. al. 2016-CP-40-6916 Plaintiff's Motion to Reconsider

Can I have until Wednesday of next week to file a response on behalf of SCDC?

Thank you,

(Sent from mobile device)

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
Riley Pope & Laney, LLC  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: damonw@rplfirm.com  
Web: www.rplfirm.com<http://www.rplfirm.com>

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On Tue, Oct 10, 2017 at 4:42 PM -0400, "Hood, Robert E. Law Clerk (Bailey Davis)" <rhodlc@sccourts.org<mailto:rhodlc@sccourts.org>> wrote:

Good afternoon,

Judge Hood's Office has received the Plaintiff's Motion to Reconsider. Would the Defense like to respond?

Thanks,

C Bailey Davis  
Law Clerk to the  
Honorable Robert E. Hood  
Circuit Court Judge  
Fifth Judicial Circuit  
Richland County Judicial Center  
1701 Main Street  
Post Office Box 192  
Columbia, SC 29202-0192

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# EXHIBIT I

**Hood, Robert E. Law Clerk (Bailey Davis)**

---

**From:** Beth Cogan <Beth@desaballard.com>  
**Sent:** Monday, December 18, 2017 11:26 AM  
**To:** Hood, Robert E. Law Clerk (Bailey Davis)  
**Subject:** RE: Charles Carpenter v. SCDC, et al 2016-CP-40-6916

Thank you, Bailey.  
I hope you have a Merry Christmas!  
-Beth

**From:** Hood, Robert E. Law Clerk (Bailey Davis) [mailto:rhooldc@sccourts.org]  
**Sent:** Monday, December 18, 2017 11:20 AM  
**To:** Beth Cogan <Beth@desaballard.com>  
**Subject:** RE: Charles Carpenter v. SCDC, et al 2016-CP-40-6916

Good morning,  
See attached.  
Thanks,  
Bailey Davis

**From:** Beth Cogan [mailto: Beth@desaballard.com]  
**Sent:** Monday, December 18, 2017 10:47 AM  
**To:** Hood, Robert E. Law Clerk (Bailey Davis) <rhooldc@sccourts.org>  
**Cc:** Clay Mitchell <CMitchell@scag.gov>; damonW@rplfirm.com  
**Subject:** Charles Carpenter v. SCDC, et al 2016-CP-40-6916

Good morning,  
I hope this emails finds all of your holiday shopping complete. There seems to be a delay in Richland County after the Judge signs an Order and the Order being filed. For example, in the Carpenter matter, the Order denying the Petitioner's Writ of Habeas Corpus was signed on September 12, 2017. However, the Order wasn't filed until October 2, 2017. Unfortunately, that sort of delay isn't isolated to just this case. This email is to follow up on the status of the Motion to Reconsider for the above-referenced matter. The motion was filed on October 10<sup>th</sup> and the Defendants' responses on October 23<sup>rd</sup> and October 30<sup>th</sup>.  
Thank you for your time and attention to this matter.

Kindest Regards,  
-Beth

Beth Cogan, Paralegal  
Ballard & Watson, Attorneys at Law  
Post Office Box 6338  
West Columbia, South Carolina 29169  
803.796.9299  
803.796.1066 Facsimile  
[beth@desaballard.com](mailto:beth@desaballard.com)

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# EXHIBIT #3

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Charles Eugene Carpenter, Appellant,

v.

South Carolina Department of Corrections and the State  
of South Carolina, Respondents.

Appellate Case No. 2017-002577

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Appeal From Richland County  
Robert E. Hood, Circuit Court Judge

---

Opinion No. 5762  
Heard June 3, 2020 – Filed August 19, 2020

---

**AFFIRMED IN PART, VACATED IN PART, AND  
REMANDED**

---

Desa Ballard and Harvey M. Watson, III, both of Ballard  
& Watson, Attorneys at Law, of West Columbia, for  
Appellant.

Damon Christian Wlodarczyk, of Riley Pope & Laney,  
LLC, of Columbia, for Respondent South Carolina  
Department of Corrections.

Attorney General Alan McCrory Wilson and Senior  
Assistant Deputy Attorney General Megan Harrigan  
Jameson, both of Columbia, for Respondent the State.

---

**HILL, J.:** Charles Carpenter alleges he is being unlawfully held in prison because his sentences for conspiracy in trafficking cocaine and conspiracy in trafficking marijuana have expired. He raised these allegations in two separate civil actions: a petition for writ of habeas corpus and a declaratory judgment action. After a bench trial, the circuit court ruled Carpenter was procedurally barred from raising his allegations in a petition for a writ of habeas corpus, and even if not barred, his allegations lacked merit. The circuit court therefore granted declaratory judgment in favor of the South Carolina Department of Corrections (SCDC). Carpenter appeals these findings and also claims the circuit court erred in failing to rule on his declaratory judgment claims against the State and by failing to disclose a disqualifying bias in favor of the State. We affirm in part, vacate in part, and remand.

## I. FACTS

After a state-wide grand jury investigation, Carpenter pled guilty in April 1990 to conspiracy to traffic cocaine and conspiracy to traffic marijuana. The plea agreement stipulated that if Carpenter cooperated with the State's investigation, the State would ask the trial court to run the sentences for his two convictions concurrently. In June 1990, the trial court sentenced Carpenter to twenty-five years' imprisonment for the offense of conspiracy of trafficking in cocaine. At the sentencing hearing, the State alleged Carpenter had not complied with the terms of his plea agreement. The trial court ruled it was holding the sentence for conspiracy to traffic marijuana in abeyance pending a later sentencing hearing regarding Carpenter's alleged non-cooperation.

When Carpenter's sentencing hearing was reconvened in August 1990, the State presented evidence Carpenter had not cooperated with the State and therefore breached the plea agreement. The trial court found "beyond absolutely any doubt" the State had lived up to their agreement, but Carpenter had failed to do so. The trial court sentenced Carpenter to twenty-five years' imprisonment for conspiracy to traffic marijuana and ordered the sentence run consecutively to Carpenter's sentence for conspiracy to traffic cocaine imposed in June 1990. In February 1992, the trial court issued an order affirming the August 9, 1990 consecutive sentence for conspiracy to traffic marijuana and divesting itself of jurisdiction over the matter.

Carpenter's convictions and sentences were affirmed on direct appeal. Carpenter then filed several post-conviction relief (PCR) applications, which were denied. In 1993, Carpenter filed a petition for writ of habeas corpus, which was also denied. This denial was affirmed on direct appeal.

Upon Carpenter's remand to the custody of SCDC, his SCDC offender summary displayed his "maxout" date as November 23, 2016. A few years later, his summary reflected he was eligible for work release and noted he had earned a total of 700 good-time days and 102 earned work credits. In 1997, Carpenter's sentence was changed in the offender summary to indicate it was not parole eligible. Throughout the 1990s and early 2000s, Carpenter's maxout date fluctuated, but it was never designated as later than 2019. During these fluctuations, his offender summary consistently stated his total sentence was fifty years and his sentences were to be served consecutively. In 2011, Carpenter's projected maxout date changed to April 7, 2040. A note at the bottom of the offender summary stated "Inmate's sentence corrected to show 25 yrs mandatory minimum [day]-for-day sentence per statute . . ."

Carpenter wrote a letter to SCDC asking why his maxout date had changed to 2040. SCDC notified Carpenter his sentence was modified on June 24, 2011, as a result of an audit because pursuant to the statute he was sentenced under in 1990, Carpenter was required to serve two mandatory minimum sentences for "a total of 50 years that had to be served day-for-day." There is no evidence in the record showing Carpenter ever received a hearing on the issue of the change to his maxout date.

On September 8, 2013, Carpenter filed an SCDC "Inmate Grievance Form Step 1," stating his good time and earned work credits had been removed from his SCDC record, and if they were not restored, he would serve more time in prison than the law required. His grievance was denied. Carpenter then completed an SCDC "Inmate Grievance Form Step 2," arguing SCDC had misinterpreted the law, and as a result, he was being held past his maxout date. The grievance was denied in March 2013. The denial letter informed Carpenter he could appeal this decision to the Administrative Law Court (ALC). There is no evidence in the record that Carpenter pursued an appeal of this grievance denial.

Carpenter later hired a lawyer to investigate the change in his maxout date. The lawyer's correspondence with SCDC revealed that in 2010, an inmate named Carlos Gonzales wrote the South Carolina Supreme Court alleging he was being held past his SCDC maxout date. When the supreme court asked SCDC to respond to Gonzales' letter, SCDC conducted an internal audit of all drug-trafficking offenders who were sentenced to twenty-five years or more before 1996. As a result of the audit, SCDC discovered that in the early 1990s, its record system was not programmed "to capture the 25 years day-for-day," and as a result, some inmates' sentences "were not being reflected correctly." Carpenter was one of those inmates, and his sentences were "updated" to mandatory minimum sentences, causing the

spike in Carpenter's maxout date to 2040. About four other inmates' sentences were "updated" in the same way.

Other inmates whose sentences were audited had already been released, including Carpenter's co-conspirator, Bobby Gene Horne. Although sentenced to twenty-five years under the same statute as Carpenter, Horne received good-time, work, and educational credits. In an email to Carpenter's attorney, SCDC indicated that if Carpenter's sentence had not been entered as "day-for-day" as a result of the audit, he would have received the same type of credits as Horne, and due to Carpenter's consecutive sentence, he would have been released in 2015, fourteen years after Horne.

In this habeas corpus petition and declaratory judgment action, Carpenter alleges: 1) the trial court's jurisdiction to sentence Carpenter ended when the trial court accepted Carpenter's plea and sentenced him in June 1990; therefore, the trial court had no jurisdiction to impose the consecutive twenty-five sentence on Carpenter in August 1990, and that sentence is void; 2) SCDC violated Carpenter's due process rights by denying him notice and a hearing when it changed his sentence to be non-parolable, removed his good-time and work credits, and changed his maxout date to 2040; and 3) SCDC violated Carpenter the right to equal protection under the law when it released Horne in 2001 due to the good-time and work credits he had earned but denied Carpenter's right to the same credits and credit eligibility. Carpenter made these three allegations in both his declaratory judgment cause of action and his petition for a writ of habeas corpus. His prayer for relief included: his immediate release from SCDC custody; a declaration that the trial court's jurisdiction to sentence him evaporated after the trial court sentenced him on the cocaine trafficking conspiracy charge in June 1990; and a declaration that SCDC violated his due process and equal protection rights.

SCDC and the State moved to dismiss Carpenter's actions. In April 2017, retired Chief Justice Jean H. Toal, sitting as a circuit judge, heard the motions to dismiss. Both the State and SCDC argued Carpenter's claims were not appropriate for habeas corpus relief and should have been brought through the Uniform Post-Conviction Relief Procedure Act (PCR Act), S.C. Code Ann. §§ 17-27-10 to -120 (2014 & Supp. 2019), or through SCDC's grievance procedure. Judge Toal denied the State's and SCDC's motions to dismiss, finding the circuit court had jurisdiction over habeas petitions and over declaratory judgment claims. Judge Toal also ruled the PCR Act was not the exclusive method for challenging an unlawful sentence and declaratory relief was available under the circumstances to resolve Carpenter's legal disputes.

In June 2017, Judge Robert E. Hood held a bench trial on Carpenter's habeas corpus and declaratory judgment actions. At the trial, Carpenter contended the trial court did not have jurisdiction to bifurcate Carpenter's sentencing proceeding, and therefore, the proceeding that occurred on August 9, 1990, was not legal and could not result in a valid sentence. Carpenter asserted he had never raised the issue of whether the trial court had jurisdiction to sentence him as to his trafficking in marijuana charge at the August 9, 1990 hearing in any previous PCR action.

Carpenter next argued SCDC changed his sentence without notice, which violated his right to due process. Carpenter asserted the appropriate remedy for the due process violation was for the change in his maxout date to be vacated. Carpenter alleged SCDC violated his due process rights by removing his good-time and work credits, changing his parole eligibility, and increasing his maxout date to 2040 without notice and a hearing and by treating him disparately from other similarly convicted prisoners, specifically Horne. Carpenter further argued he was entitled to immediate release from SCDC custody due to SCDC's multiple violations of his due process rights.

The State responded Carpenter was procedurally barred from raising an issue related to the validity of his sentence in the current habeas petition; instead, such a challenge must be raised through PCR. The State also asserted Carpenter must demonstrate he has exhausted his PCR remedies to be eligible for habeas relief. Finally, the State claimed only the South Carolina Supreme Court has jurisdiction to hear a petition for a writ of habeas corpus if it is found to be procedurally barred in circuit court.

Judge Hood issued two orders, one in favor of SCDC on Carpenter's declaratory judgment claims and the second dismissing Carpenter's petition for habeas corpus against the State. Carpenter filed a Rule 59(e), SCRCF motion to reconsider both orders and asserted Judge Hood failed to rule on his declaratory judgment claims as to the validity of his original sentence. The Rule 59(e), SCRCF motion was denied. Carpenter filed the present appeal. At the same time, he filed his petition for a writ of habeas corpus and a request to certify this appeal with the South Carolina Supreme Court. *See Carpenter v. SCDC*, Case No. 2017-002577; *Carpenter v. SCDC*, Case No. 2017-002582. On June 12, 2018, the supreme court issued an order denying Carpenter's request to entertain his petition for a writ of habeas corpus in the court's original jurisdiction. *Carpenter v. SCDC*, S.C. Sup. Ct. Order dated June 12, 2018. The supreme court also denied Carpenter's request to certify this appeal. *Id.*

## II. DISCUSSION

This appeal involves appraisal of the framework under which an inmate may challenge the validity of his sentence and SCDC's interpretation and administration of that sentence. We outline this process in the hope that inmates may be able to avoid procedural ping pong of their claims and undertake the most efficient and effective method to receive relief to which they may be eligible.

A. Whether Carpenter Raised PCR Claims

Carpenter alleges he is being held unlawfully in SCDC custody past the expiration of his valid sentence for several reasons. We find Carpenter's claims are PCR claims and should have been raised as such.

South Carolina's PCR Act provides the legal mechanism for:

- (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
  - (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
  - (2) That the court was without jurisdiction to impose sentence;
  - (3) That the sentence exceeds the maximum authorized by law;
  - (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
  - (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
  - (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing

fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

- (B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

S.C. Code Ann. § 17-27-20 (2014).

In *Gibson v. State*, 329 S.C. 37, 40–41, 495 S.E.2d 426, 428 (1998), the South Carolina Supreme Court held:

The availability of habeas corpus has been severely limited by the [PCR Act]. The [PCR] Act "takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." S.C. Code Ann. § 17-27-20([B]) (1976). Thus, this Act supersedes and encompasses the habeas corpus procedure provided by statute.

The *Gibson* court further found, "Habeas corpus is available only when other remedies, such as PCR, are inadequate or unavailable," *id.* at 41, 495 S.E.2d at 428, and "[p]rocedurally, a petitioner seeking habeas corpus must first exhaust all available PCR remedies." *Id.* at 42, 495 S.E.2d at 428. In defining "exhaustion," the court found: "Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Further, petitioner must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate." *Id.* When a petitioner has filed a petition for a writ of habeas corpus without first exhausting his PCR remedies, the court may construe his petition as an application for PCR. *Id.* at 41, 495 S.E.2d at 428.



In *Al-Shabazz v. State*, 338 S.C. 354, 368, 527 S.E.2d 742, 749 (2000), the South Carolina Supreme Court specifically examined subsection 17-27-20(A)(5) of the PCR Act, the provision for when "the applicant asserts he has fully served a valid sentence and now must be released," noting its inclusion in the PCR Act "reflects the fact that the [PCR Act] replaced the petition for a writ of habeas corpus, which an inmate would have used to make such claims in the past." *Id.* at 368, 527 S.E.2d 742, 749.

The *Al-Shabazz* court also found an application for PCR was not the appropriate method for raising sentencing credits issues. *Id.* at 366–68, 527 S.E.2d at 748–49. Rather, inmates must raise those issues first through SCDC's internal grievance process and then, if the decision involves the removal of earned sentencing credits, through an appeal to the ALC. *Id.*; see also *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 629–30, 733 S.E.2d 211, 217–18 (2012) (holding inmates have a protected liberty interest in earned sentencing credits and are entitled to judicial review of a decision resulting in the removal of those credits). However, the *Al-Shabazz* court found there was an exception to this statutorily-mandated procedure: when the sentencing credit issue is alleged to have caused an inmate to remain imprisoned past the expiration of his lawful sentence, the claim is appropriately raised in a PCR application under § 17-27-20(A)(5). 338 S.C. at 368, 527 S.E.2d at 749.

Carpenter alleges he is being held unlawfully in SCDC custody past the expiration of his valid sentence under two theories. First, he alleges his lawful sentence of twenty-five years' imprisonment for his conviction of conspiracy to traffic cocaine has been served, and his second consecutive sentence of twenty-five years' imprisonment for conspiracy to traffic marijuana was never a valid sentence because the sentencing court lost jurisdiction to sentence him at the conclusion of the June 1990 sentencing hearing. Carpenter contends because he has served his only lawful sentence of twenty-five years' day for day, he is entitled to immediate release from SCDC custody. As this allegation falls squarely under subsections 17-27-20(A)(2) and (5), it is a PCR claim. § 17-27-20(A)(2), (5) ("Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat the court was without jurisdiction to impose sentence; . . . [or t]hat his sentence has expired . . . may institute . . . a proceeding under [the PCR Act] to secure relief.").

Second, Carpenter alleges SCDC misinterpreted both the law and his sentence when it concluded he is not entitled to his earned good-time and work credits and is no longer eligible for parole or for the accrual of sentencing credits of any kind. Carpenter alleges if he had been allowed to retain his earned sentencing credits and eligibility for sentencing credits, he would have been released in 2015, and therefore, he is being held unlawfully in SCDC custody past the expiration of his valid

sentence. As this allegation falls squarely under § 17-27-20(A)(5), it is also a PCR claim. § 17-27-20(A)(5) ("Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired . . . may institute . . . a proceeding under [the PCR Act] to secure relief."); *see also Al-Shabazz*, 338 S.C. at 368, 527 S.E.2d at 749 (providing when the sentencing credit issue is alleged to have caused an inmate to serve past the expiration of his lawful sentence, the claim is appropriately raised in a PCR application under § 17-27-20(A)(5)).

Having determined both of the theories presented by Carpenter for relief are, in fact, PCR claims, we next consider whether the PCR Act is the exclusive procedural framework for the evaluation of his claims at this time. For the reasons that follow, we conclude it is.

### B. Declaratory Judgment

First, we hold Carpenter may not circumvent the procedures designated in the PCR Act by filing his PCR claims under the Declaratory Judgment Act. Declaratory judgment claims are creatures of statute, and an individual's right to pursue declaratory judgment derives from that statutory authority. *See Thompson v. State*, 415 S.C. 560, 564, 785 S.E.2d 189, 191 (2016) ("Pursuant to South Carolina's Uniform Declaratory Judgments Act (the Declaratory Judgment Act), '[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.'" (quoting S.C. Code Ann. § 15-53-20 (2005))). When the Legislature passed the PCR Act, it included the unambiguous mandate that: "Except as otherwise provided in [the PCR Act], it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." § 17-27-20(B).

We find both of Carpenter's claims fit squarely into a category available for redress under the PCR Act in § 17-27-20(A), and therefore, his claims, which he raised under the Declaratory Judgment Act, must be dismissed as procedurally barred by the PCR Act pursuant to § 17-27-20(B). Accordingly, we vacate Judge Hood's order granting declaratory judgment to SCDC, and we dismiss Carpenter's request for a declaratory judgment as to the validity of his sentence for conspiracy to traffic marijuana.

### C. Writ of Habeas Corpus

Next, we hold Carpenter's petition for a writ of habeas corpus is also procedurally barred by the PCR Act because Carpenter admits he has not raised his current claims for habeas relief in any previous application for PCR. He has not exhausted his PCR

remedies pursuant to *Gibson* and is procedurally barred from raising his claims in a petition for a writ of habeas corpus in the circuit court until he has done so. However, under *Gibson* it is appropriate to construe Carpenter's current habeas claims as a PCR application, and as such, we vacate Judge Hood's findings regarding the merits of Carpenter's claims for habeas relief and remand Carpenter's case to the circuit court to be treated as a PCR application and for a PCR hearing on the following PCR issues:

Did the sentencing court retain jurisdiction to sentence Carpenter on the conspiracy to traffic marijuana offense in August 1990?

Did SCDC appropriately interpret South Carolina law to find Carpenter's sentence must be served day for day for fifty years and Carpenter is not entitled to his earned work or good-time credits? If SCDC did not, has Carpenter accrued enough sentencing credits to be entitled to immediate release?

#### D. Successive or Time-Barred

Carpenter's action also raises questions regarding the intersection of the PCR Act's provisions regarding successive and time-barred petitions and its provision allowing claims where inmates have asserted their lawful sentence has expired. Because Carpenter has filed several PCR applications, on remand, he has the burden to prove a sufficient reason why he did not raise his present claims in his previous applications or they may be subject to being dismissed as successive. S.C. Code Ann. § 17-27-90; *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). He must also prove his PCR claims are not time-barred under § 17-27-45. Should the circuit court find Carpenter's claims are successive or time-barred, it may conclude Carpenter has exhausted all available PCR remedies and treat Carpenter's claims as a petition for a writ of habeas corpus. If treated as a habeas corpus petition, Carpenter will have the burden of proving his current detention is a violation "which . . . constitutes a denial of fundamental fairness shocking to the universal sense of justice" in order to be entitled to release from prison. *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990).

#### E. Alleged Bias of Judge Hood

Carpenter argues Judge Hood was biased in favor of the State. We find this issue unpreserved for appellate review because Carpenter never moved for Judge Hood to

recuse himself based on his alleged bias in favor of the State. *See Gaddy v. Douglass*, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004) (providing in order to preserve the issue of whether a circuit court judge should have recused himself from a case, the issue must have been raised to the circuit court); *Davis v. Parkview Apartments*, 409 S.C. 266, 289, 762 S.E.2d 535, 547 (2014) ("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts." (quoting *Duplan Corp. v. Milliken, Inc.*, 400 F. Supp. 497, 510 (D.S.C. 1975))).

#### F. Res Judicata

We reject the State's argument that the supreme court's denial of Carpenter's petition for original jurisdiction and a writ of habeas action constitutes res judicata or has any other preclusive effect in this case. The denial order was not based on the merits. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) *adjudication of the issue in the former suit.*" (emphasis added)). As the court noted in *Simpson v. State*, it has the authority to entertain habeas corpus petitions in its original jurisdiction. 329 S.C. 43, 46 n.4, 495 S.E.2d 429, 431 n.4 (1998) ("Under art. 5, § 5 of the South Carolina Constitution, this [c]ourt retains the ability to entertain writs of habeas corpus in our original jurisdiction and grant relief in those unusual instances where 'there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.' [*Butler*, 302 S.C. at 468, 397 S.E.2d at 88]; *see also Simmons v. State*, 322 S.C. 49, 471 S.E.2d 455 (1993); *Key v. Currie*, [305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991)] (this Court will exercise its original jurisdiction where there is an extraordinary reason such as a question of significant public interest or an emergency)."). This does not mean, though, that the supreme court's habeas corpus jurisdiction is exclusive. *See Gibson*, 329 S.C. at 42, 495 S.E.2d at 429 (finding that upon remand if petitioners can show "PCR is unavailable, all other remedies have been exhausted, and the issues raised now could not have been raised in their prior PCR applications, the lower court may treat the applications as habeas petitions and provide a hearing on their constitutional claim." (emphasis added)). Nor does it mean an order of that court declining to exercise its original jurisdiction operates as a ruling on the merits for purposes of res judicata.

### III. CONCLUSION

Carpenter's claims are cognizable under subsections 17-27-20(A)(2) and (5) of the

PCR Act and have not been raised in any previous PCR application. Accordingly, Carpenter is procedurally barred from raising them under the Declaratory Judgment Act or in a petition for a writ of habeas corpus. Therefore, we affirm Judge Hood's order dismissing Carpenter's habeas petition to the extent it finds the habeas petition was procedurally barred, and we vacate Judge Hood's orders: (1) granting declaratory judgment in favor of SCDC and (2) evaluating the merits of Carpenter's habeas corpus claim. We construe Carpenter's habeas corpus petition as an application for PCR and remand to the circuit court for an evaluation of his claims in accordance with this opinion.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

**WILLIAMS and KONDUROS, JJ., concur.**

# EXHIBIT #4



The Supreme Court of South Carolina  
COMMISSION ON JUDICIAL CONDUCT

Deborah S. McKeown  
Commission Counsel

1220 Senate Street, Suite 305  
Columbia, South Carolina 29201  
Telephone: (803) 734-1965  
Fax: (803) 734-0363

June 25, 2018

PERSONAL AND CONFIDENTIAL

Desa Ballard, Esquire  
Ballard & Watson, Attorneys at Law  
Post Office Box 6338  
West Columbia, SC 29171-6338

RE: NOTICE OF FINAL DISPOSITION  
The Honorable Robert E. Hood  
Matter Number: 18-DE-J-0064

Dear Ms. Ballard:

You previously filed a complaint with the Commission on Judicial Conduct about The Honorable Robert E. Hood in connection with the above-referenced matter. The Commission instructed the Office of Disciplinary Counsel to conduct an investigation into your allegations.

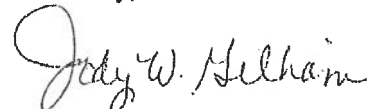
On June 22, 2018, an investigative panel of the Commission convened to consider the recommendation of the Disciplinary Counsel for disposition of this matter based on the information gathered in the investigation. As required by the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, the inquiries of the panel were limited to whether or not there was evidence of ethical misconduct on the part of Judge Hood that would warrant further investigation or the filing of formal charges.

After considering the information received from you, Judge Hood's response, and the report of Disciplinary Counsel setting forth the results of the investigation, the investigative panel voted to dismiss your complaint. At the direction of the Commission, I am notifying you of the action taken by the Commission on this matter. This dismissal constitutes a final disposition of your complaint.

Desa Ballard, Esquire  
June 25, 2018  
Page Two

As required by the rules, Judge Hood and the Disciplinary Counsel are being notified of the action taken by the investigative panel by copy of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Jody W. Gilham". The signature is written in black ink and is positioned above the printed name and title.

Jody W. Gilham  
Administrative Assistant

JWG/

cc: The Honorable Robert E. Hood

Joseph P. Turner Jr., Esquire  
Senior Assistant Disciplinary Counsel