

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAY 16 2013

SC Court of Appeals

HONORABLE STEVEN JONAH, CIRCUIT COURT JUDGE

APPELLATE CASE NO: 2013-000306

CURTIS RICHARDSON

PETITIONER

V

STATE OF SOUTH CAROLINA

RESPONDENT

FACTS, ARGUMENT AND CITATION TO LEGAL AUTHORITY
TO SHOW ARGUABLE BASIS FOR ASSERTING THAT THE
DETERMINATION BY THE CIRCUIT COURT WAS IMPROPER
PURSUANT TO RULE 203 (D)(1)(B)(VI), SCACR

HONORABLE CLERK:

PURSUANT TO YOUR MAY 7, 2013 ORDER PLEASE BE
ADVISED AS FOLLOWS:

THAT THE CIRCUIT COURT SOLELY FOUND THAT "IN
THIS MATTER, PETITIONER HAS A PENDING PCR ACTION
AND HAS ALSO FAILED TO EXHAUST HIS REMEDY
IN THE ADMINISTRATIVE LAW COURT." (SEE ATTACHED ORDER)

PLEASE FURTHER FIND THAT PRIOR TO YOUR ISSUANCE OF YOUR MAY 7, 2013 ORDER. PETITIONER APPEARED BEFORE THE PCR COURT ON APRIL 23, 2013.

AT THE HEARING ON PCR, THE ISSUE AT BAR VIA THIS WRIT WAS RAISED AND HEARD BY JUDGE HYMAN WHOM STATED "THIS IS AN ADMINISTRATIVE MATTER AND NOT A PCR ISSUE." MY PCR COUNSEL ALSO STATED IN HIS AUGUST 9, 2012 ADDRESSING THAT MY SENTENCE ISSUE "WAS NOT A PCR ISSUE." (ATTACHED).

ALTERNATIVELY BEING THAT MY SECOND WRIT OF HABEAS CORPUS WAS PENDING APRIL 23, 2013 DURING THE PCR HEARING. I REQUESTED JUDGE HYMAN TO HEAR MY NEW PENDING WRIT RELEVANT TO MY SENTENCE AS ALL REMEDIES ARE NOW EXHAUSTED.

HOWEVER, JUDGE HYMAN REPLIED "YOU DO NOT HAVE AN ATTORNEY TO REPRESENT YOU ON YOUR WRIT OF HABEAS CORPUS," AND REFUSED TO ENTERTAIN IT. (SEE PENDING WRIT OF HABEAS CORPUS IN CIRCUIT COURT OF HONOLULU COUNTY NO: 2013-CP-26-1723)

FURTHERMORE PURSUANT TO AL-SHABAZZ V STATE 527 S.E.2D 742 (2000) OUR S.C. SUPREME COURT RULED THAT "SENTENCE RELATED ISSUES AND DOWNGRADING OF CUSTODY STATUS ARE NOT PROPERLY RAISED IN PCR PROCEEDINGS." SECONDLY I RAISED A SUBJECT MATTER JURISDICTION ISSUE AT THE APRIL 23, 2013 PCR HEARING RELAYING TO JUDGE HYMAN BY EXHIBITS THAT THE COURT LACKED JURISDICTION TO ACCEPT MY GUILTY PLEA SINCE I HAD NEITHER BEEN INDICTED NOR WAIVED PRESENTMENT

OF THIS CHARGE. JUDGE HYMAN THEN AGREED WITH MY ISSUE OF THE COURTS LACK OF JURISDICTION AND RELAYED TO ME "I MUST GRANT PCR RELIEF BASED ON THE ARGUMENTS HOWEVER YOU WILL BE REINDICTED AND RESENTENCED TO 25 TO 30 YEARS IN PRISON FOR THE SAME OFFENSE."

BASED ON AL-SHABAZZ V STATE MY SENTENCE ISSUE COULD NOT BE ENTERTAINED AND JUDGE HYMAN THREATENED ME WITH 25 TO 30 YEARS IN WHICH I WAS AFRAID TO CHANCE HIS ENFORCEMENT OF HIS THREAT.

I KNOW HOWEVER THAT I CAN NOT BE RETRIED AND GET A NEW 25 TO 30 YEARS ADDITIONAL SENTENCE VIA WRIT OF HABEAS CORPUS. IN SLACK VS STATE 429 SE2D 801 THE HORDY COUNTY COURT OF COMMON PLEAS GRANTED THE WRIT ON IDENTICAL MERITS. ALSO SEE SIMMONS V STATE 471 SE2D 455 AND BUTLER V STATE 397 SE2D 87 (SC 1990) GRANTING WRIT

FINALLY AS RESPONDENTS HAVE VIOLATED ITS TIME LIMITS PER THIS COURTS RULES TO FILE A BRIEF PURSUANT TO RULES 208 (2) 208 (4) AND 210 PETITIONER SHOULD NOT BE FORCED TO ARGUE IN SUPPORT OF THIS APPEAL AS RESPONDENTS HAVE CONSENTED TO ITS MERITS VIA SPECIFICALLY FAILURE TO DEFEND (SEE RULE 208 (2))

PETITIONER HAS EXHAUSTED ALL ADMINISTRATIVE AND ADMINISTRATIVE LAW COURT REMEDIES AS SUPPORTED VIA ATTACHED DISMISSALS OF CLAIMS WHICH ARE NOW ALSO PENDING IN THIS COURT WHICH NOW GRANTS THIS COURT EXCLUSIVE JURISDICTION. THERE EXISTS NO OTHER REMEDY AS PCR RELIEF IS NOT AVAILABLE VIA AL-SHABAZZ

ALSO SEE PELTZER V STATE (672 SE2) 790 (SC APP 2009)
TRIAL COURT LACKS SUBJECT MATTER JURISDICTION TO
CONVICT DEFENDANT OF CRIME THAT IS NOT A LESSER
INCLUDED OF THE OFFENSE CHARGED IN THE INDICTMENT.

IN THE CASE AT BAR POSSESSION OF MARIJUANA WITH
INTENT TO DISTRIBUTE 1ST OFFENSE 4 GRAMS WAS NOT THE
LESSER INCLUDED OF THE INDICTMENT OFFENSE WHICH
ALLEGED NO DRUG QUANTITY SEE BLAKELY VS WASHINGTON
124 SGT 2546.

AMI) SEE DELAWARE V PROUSE 99 SGT 1391, VICKERY V STATE
732 SE2) 218 (SC 2012), STATE V RUIVENA' (682 SE2) 307
(2009) ROAD BLOCK PAPERS WERE INVALID) THEREFORE THE
DRUGS WERE ILLEGALLY SEIZED)

UNDER 24-21-32 I AM TO BE RELEASED ON MANDATORY
RE-ENTRY SUPERVISION, ON JUNE 1ST 2013.

HOWEVER BY THE SCDC AMI) SCDC PPS CHANGING
MY COURT ORDERED) NONVIOLENT SENTENCE TO VIOLENT
I WILL NOT BE RELEASED) JUNE 1ST 2013 AS MANDATED).
ACTIONS THAT CHANGE A SENTENCE FROM DISCRETIONARY TO
MANDATORY VIOLATE THE EXPOST FACTO CLAUSE SEE WEAVER
V GRAHAM 101 SGT 960 WILKINSON V AUSTIN 125 SGT
2386 (2008) ALSO SEE ROLLER V CAVANAGH 984 F2) 120
(4TH CIR CT OF APPEALS) WHICH ENTITLES PETITIONER TO
RELEASE FROM PRISON UNDER ILLEGAL SENTENCE

4
Curtis Richardson

ARREST WARRANT

J-324850

STATE OF SOUTH CAROLINA

Horry

THE STATE

Curtis Dale Richardson

4432 RAILROAD AVE
LORIS, SC 29528

Phone: SSN: 242-94-2307
Sex: M Race: B Height: 6 1 Weight: 170
DL State: SC DL #: 006021413

Agency ORI #: SCSHP0000
12/18/1953
Prosecuting Agency: Horry County Highway Patrol
Prosecuting Officer: Gregory R McCrackin - 8161

Offense: Drugs / Manuf., poss. of other sub. in Sch. I,II,III
or Marijuana, w.i.t.d. - 1st offense
Offense Code: 0186
Code/Ordinance Sec: 44-53-0370(b)(2)

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

Signature of Judge

Date: (L.S.)

A copy of this arrest warrant was delivered to
defendant
RETURN

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

Horry

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on or about
State of South Carolina (or ordinance of
in the following particulars:

DESCRIPTION OF OFFENSE

Drugs / Manuf., poss. of other sub. in Sch. I,II,III or Marijuana, w.i.t.d. - 1st offense

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

That on January 23, 2010 in the city/county of Horry, one Curtis Dale Richardson did aid, abet, attempt or conspire to manufacture,
distribute, dispense, deliver, purchase and or possess 4.5 grams of Marijuana, with the intent to manufacture, distribute, dispense,
deliver, or purchase Marijuana, a controlled substance or a controlled substance analogue classified in Schedule I (b) and (c) which
is a narcotic drug or lysergic acid diethylamide (LSD) or in Schedule II which is a narcotic drug.

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of

Horry

Affiant's Address
4195 Hwy 701 North
Conway, SC 29526

Affiant's Telephone

ARREST WARRANT

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

on or about 1/23/2010
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Horry
defendant Curtis Dale Richardson
) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or Marijuana, w.i.t.d. - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 01/24/2010

Signature of Issuing Judge

Christoffer John Arnkas
Judge Code: 5080

Judge's Address

J. Ruben Long Detention Center
Conway, SC 29526

Issuing Court: X Magistrate

Magistrate

Municipal

Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCDA 518

RECEIVED
MAY 1 2010

SC Court of Appeals

FILED
Horry County
2010 JAN 28 PM 12:02
CLERK OF COURT
M. L. McCrackin

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.
Curtis Dale Richardson

INDICTMENT/CASE#: 2010GS2602856
A/W#: J324850
Date of Offense: 1/23/2010
S.C. Code §: 44-53-0370(b)(2)
CDR Code #: 0186

AKA:
Race: BLACK Sex: M Age: 57
DOB: 12-18-1953 SS#: 242-94-2307
Address: 2002 APEX HIGHWAY
City, State, Zip: DURHAM, NC
DL#: 006021413 SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Drugs / Manuf. poss. of other sub. in Sch. I,II,III or Marijuana, w.i.t.d. - 1st offense 5 yrs, 2/10 #5K

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Heather von Harrmann SCB06947 Defendant Curtis Dale Richardson Attorney for Defendant 5 yrs 6/193 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

with subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/16/2011 (Unlawful Possession of a Pistol)
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be paid in equal consecutive weeks/months
pmts. of \$ 25.00 beginning 10/16/2016
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cv	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins-Ward
Court Reporter Grace Hurley

Presiding Judge Thompson/Cullbertson
Judge Code: 2148
Sept. 16, 2011

STATE OF SOUTH CAROLINA

COUNTY OF Horry VS. Curtis Dale Richardson

AKA: Race: BLACK Sex: M Age: 57 DOB: 12-18-1953 SS#: 242-94-2307 Address: 4432 Railroad Ave City, State, Zip: Loris, SC 29569-2454 DL#: 100937975 SID#:

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistol 5 yrs. = 10*2K

in violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364 [X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [] As Indicted, [] Lesser Included Offense. [X] Defendant Waives Presentation to Grand Jury. [] (defendant's initials) The plea is: [X] Without Negotiations or Recommendation. [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: von Herrmann, Heather SCB06947 SC Bar# Defendant Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 3 days/months/years or [] under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*, the balance is suspended probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on: [X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered Total: \$ plus 20% fee: \$ Payment Terms: [] Set by SCDPPPS

PTUP days/hours Public Service Employment

Obtain GED [] Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling [] Random Drug/Alcohol testing [] Fine may be pd in equal consecutive weeks/months pmts. of \$ 25.00 beginning 10/16/2014 \$ paid to Public Defender Fund Other:

Recipient:

Table with 2 columns: Description and Amount. Rows include assessments, surcharges, and fees totaling \$133.90.

[] Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins-Ward Court Reporter Grace Hurley

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-26-3427 A/W#: 2011GS 26 3427 HA Date of Offense: 1/27/2011 S.C. Code § : 16-23-0030, 0050(A)(1) CDR Code #: 2364

SENTENCE SHEET

Presiding Judge Myraumont Culbertson Judge Code: 2148 Sept. 16, 2011

WITNESSES

Gregory McCrackin South Carolina Highway Patrol

DOCKET NO. 2010-GS-26- **2856**

The State of South Carolina

County of Horry

201

Heather von Hermann
10H00324

COURT OF GENERAL SESSIONS

JULY, 2010 TERM

REST WARRANT NUMBER

J324850

CDR: 0187 44-53-0370(b)(2)
DOA: 1/24/2010

ACTION OF GRAND JURY

INDICTMENT

Gregory McCrackin

Foreperson of Grand Jury JUL 29 2010

VERDICT

Curtis Dale Richardson
B/M
4432 RAILROAD AVE
LORIS, SC 99999-0000
DOB: 1953-12-18
SSN: 242942307

THE STATE

VS.

ATTORNEY: Ritner, J. Andrew

Indictment for

POSSESSION OF MARIJUANA WITH INTENT
TO DISTRIBUTE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on JULY 29, 2010, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0187 44-53-0370(b)(2)

That Curtis Dale Richardson did in Horry County, on or about January 23, 2010, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

10.5 Other remedies, as appropriate. For example, employee discipline, inmate referral to outside sources, etc.

NOTE: The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property." *If an inmate does not accept the Warden's response and appeals to Step 2, the property/monetary reimbursement will be held by the institutional inmate grievance coordinator until a final decision has been made at the Step 2 level.*

11. **RESPONSES:** Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either Form 10-5 or 10-5a) and will be served by the Inmate Grievance Coordinator to the inmate personally. Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch. The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal. Time limits at each step in the procedure are contained herein; but in *(most)* instances, grievances will be processed from initiation to final disposition within 125 days except when the Chief/Designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the Inmate Grievance Coordinator will notify the inmate in writing. **(NOTE:** The maximum extension that may be given is 90 days. Under *(certain)* circumstances the grievance process *(may)* exceed 215 days. (See also Procedures #13 and #14.)

12. **RECORDS:** Records regarding the filing and disposition of grievances will be maintained at each institution in a manner determined by the Institutional Inmate Grievance Coordinator and the Warden; and approved by the Chief, Inmate Grievance Branch or designee. All grievances will be maintained for at least seven (7) years following their final disposition. Staff participating in the disposition of a grievance will have access to records essential to its resolution. Records pertaining to grievances will not be available to individuals who make recommendations or decisions about parole or other decisions that are not related to the grievance process. Once a grievance has been closed, it should not be reviewed or referred to unless necessary to accomplish legitimate data gathering or other grievance related objectives or for accreditation documentation with only the inmate's name blackened out as appropriate. Should any questions arise as to who should be allowed access to any such record, they will be referred to the Chief, Inmate Grievance Branch, for resolution.

13. STEPS IN THE GRIEVANCE PROCESS:

13.1 Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident. *Requests to hear disciplinary tapes must be submitted by the grievant with the Step 1 grievance form for a disciplinary appeal.* If an inmate needs additional space to complete their grievance, only one additional *one sided* page will be permitted. An inmate will submit a grievance within the time frames established in the policy. **(NOTE:** Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity.

**KERSHAW
LIBRARY**

**KERSHAW
LIBRARY**

NOW PENDING IN THIS COURT

APPELLATE CASE NO: 2013-000482

FILED

FEB 07 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Curtis Richardson, 269166,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

) Docket No.: 12-ALJ-04-0945-IJ

) Grievance No.: KRCI 0149-12

) ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed on December 21, 2012 by Curtis Richardson ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). On or about January 30, 2012, the Appellant filed a Step One Grievance with the Department in which the Appellant complains that the Department has wrongfully classified him as a violent offender. The Appellant received a response to his Step One Grievance from the Warden on March 1, 2012. The Appellant filed a Step Two Grievance on March 5, 2012. Subsequently, the Appellant filed a Notice of Appeal with this Court alleging that the Department has failed to timely render a final decision in this matter. There is no indication in the Record that the Appellant has received a response to the Step Two Grievance.

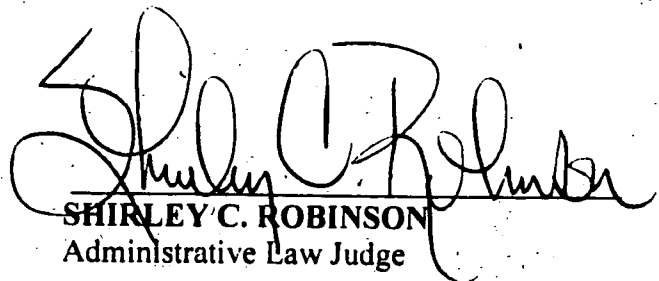
The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep't of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004) provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).


Moreover, if the Appellant's intent is to appeal a decision of the Department which jeopardizes his state-created liberty or property interests, he must first exhaust all administrative

remedies. By failing to obtain a final decision from the Department, Appellant has failed to exhaust his administrative remedies and has thus failed to meet the requirements of the Administrative Procedures Act for review by this Court: "A party who has exhausted all administrative remedies within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review. S.C. Code Ann. § 1-23-380. (Emphasis added).

Based upon the foregoing, **IT IS HEREBY ORDERED** that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge


February 11, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7 day of February 2013

By: 
Judicial Law Clerk

The South Carolina Court of Appeals

Curtis Richardson, #269166, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2013-000483

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.


FOR THE COURT

Columbia, South Carolina

cc:

Curtis D. Richardson, 00269166

Christopher D. Florian

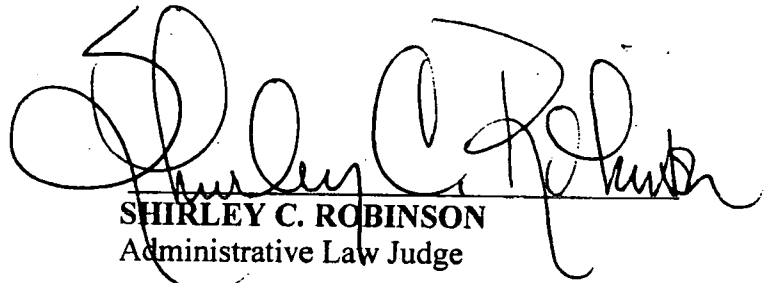
FILED

St May 6, 2013

The relevant portion of the APA provides that, "A party who has exhausted all administrative remedies within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review. S.C. Code Ann. § 1-23-380. (Emphasis added). In this instance, the Department has yet to issue a final decision in the matter; therefore, the Appellant has not exhausted his administrative remedies and does not meet the requirements of the Administrative Procedures Act for review by this Court.

Based upon the foregoing, **IT IS HEREBY ORDERED** that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

January 31st, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

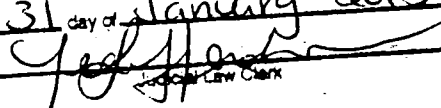
This 31 day of January 2013
By: 
Legal Clerk



EXHIBIT "A"

DANIEL A. SELWA, II
ATTORNEY AT LAW, L.L.C.

LITIGATION OFFICE:
1053 LONDON STREET
MYRTLE BEACH, S.C. 29577
OFFICE: (843) 492-5449
FAX: (843) 353-0683
MOBILE: (843) 450-7566
SELWA@SCLAWYERS.NET

REAL ESTATE OFFICE:
302 MAIN STREET
N. MYRTLE BEACH, S.C. 29582
OFFICE: (843) 281-2156
FAX: (843) 281-2159
LUANNE@SCLAWYERS.NET
WWW.SCLAWYERS.NET

August 9, 2012

Curtis Dale Richardson
Inmate #269166
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

Re: Curtis Dale Richardson vs. State of South Carolina

Dear Mr. Richardson:

It was nice to meet with you the other day. I did receive your letter dated July 1, 2012 and have reviewed it. Your next court date for the PCR's will not be in August. It has been pushed back because of the recent PCR filed. The attorney general's office did not know when the next court date would be after August.

As I stated in our meeting, I reviewed your claims on the PCR issues and have come to some conclusions as to their ability to be successful at your PCR hearing. As to the marijuana charge under § 44-53-370(b)(2), I have included the information you may have stumbled upon in your research. There is no standard amount, which forbids a charge of Possession with the intent to distribute. You will see the information I have included goes on to discuss inferences and prima facie evidence standards. Additionally, this does not apply to your case because there was never a trial where a jury instruction could have been given. In my professional opinion, I do not see a viable outcome to your claim that there was not enough marijuana to support a charge of PWID marijuana. In situations where something like that is not dismissed, it is left up to a jury to decide and I think that if this did go to trial, this issue would be submitted to the jury.



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One the second issue of necessity for reasons of carrying your gun. After my research on the subject and getting feedback from other attorneys, it seems that the necessity claim would not prevail. I have included a snippet from my research. In a viable situation, there would need to be a threat of imminent death or serious bodily harm. As I understood the facts, you were driving and had pulled back up to your house when the police officer arrested you. The officer's report was that he saw you and pulled you over because he recognized you. This would not constitute a threat of imminent death as you had the ability to escape (with car) and the person threatening you was not with you during your drive. The court would likely find that you could have driven to the police station for help.

The indictment issue is also not a viable route. Once you plead guilty you waived your right to address any indictment issues. Further, had you raised an objection to it before you plead guilty, the solicitor's office would have just re-indicted you with a corrected indictment. US vs. Cotton, 122 S.Ct 1784 deals specifically with Federal indictments not State indictments. Therefore, we cannot address the indictment and maintain our creditability with the court. I have included some information and case law about PCR's and indictments.

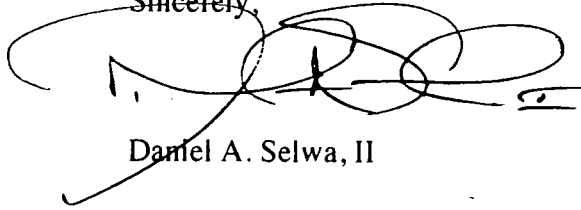
I have researched the parole issues with your two charges and cannot come to a conclusion as to why they have classified you as violent. So, since I told you it was not a PCR issue, I went ahead and called SCDC's general counsel. As it turns out, they were unable to back up your classification as violent and not eligible for parole with any statute or case law. They realize that the classification is incorrect and I am being told by the SCDC general counsel that they are in the process of having it reviewed and changed. I hope you are happy with that outcome.

There is one issue I think can be successful if executed right but since you will be parole eligible, and possibly released soon, I must ask again if you wish to readdress all these charges again? Please confirm that you do or do not want to proceed. If you wish to proceed I think the only issue will be the legality of the roadblock. With roadblocks I have subpoenaed records from both Brana and the solicitor's office. I will determine who the agency was that conducted the roadblock and determine if they followed proper procedures in making that stop. If they did not, I can question Brana as to why she did not request the proper paperwork to challenge the roadblock. If we can challenge the legality of the roadblock and win, we may be able to suppress the evidence, which, was found at the roadblock. I did speak with Brana on this issue and she has indicated that it was your wish to go ahead and plead guilty to all charges. It will be up to the Judge to decide if in fact you wish to proceed on this issue.



This is the only issue I would address in order to keep creditability with the court. We already have that working against us so we must work hard to overcome that hurdle and stay focused. I will be in touch with any updates as they come available.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel A. Selwa, II', written over a horizontal line. The signature is stylized and somewhat cursive.

Daniel A. Selwa, II

