THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Dazzelle Smith, #330312 Appellant,

V.

South Carolina Department of Corr. Respondent.

Case No.:2013-000088

Appeal From The Administrative
Law Court
John D. McLeod, Judge

Appellant's Initial Brief

This matter comes before this Honorable Court pursuant an order of dismissal of Docket No.:11-ALJ-04-0895-AP from The Administrative Law Court (ALC), John D McLeod, Judge.

STATEMENT OF ISSUES

The matter came before the ALC pursuant an appeal from the appellant, an inmate incarcerated within South Carolina Dept. of Correction's Ridgeland Correctional Institution, filed Nov. 14, 2011, whereby he appealed the decision of the Dept. of Correction (D.O.C) to administratively enhance his classification of a non-violent offender, imposed by and in a judicial

proceeding, to that of a violent offender, contrary to the sentence imposed by the trial judge.Early v. Murray, 451 F.3d 71 (US App. 2006), Hill v. Wampler, 298 U.S. 460 (1976), United States v. Marquez, 506 F.2d 620, 622 (2d cir 1974)

The appellant contends that the judgement of the Court authorized the state to incarcerate him for 3.5 years as a non-violent offender in violation of § 44-53-375 of the S.C. Code of Laws for the offender of PWID committed on Aug. 8, 2010 pursuant the omnibus crime reduction and sentencing reform act, signed by The Governor of South Carolina, and inactedby The S.C. Legislature June 2, 2010, prior to the appellant's date of offense.

STATEMENT OF CASE

(1) The appellant was sentenced on May 9th, 2011 in the Greenwood County Court of General Sessions for the 8-26-2010 offense of PWID crack cocaine, in violation of the S.C. Code of Laws § 44-53-0375, bearing COR Code No. 3015, classified by the Court as non-violent (emphasis added), indicated by the box checked non-violent on the sentencing sheet/order of commitment, issued by the Court, verified and accepted by way of affix signatures of the presiding judge, the assistant solicitor, the appellant's attorney, the appellant, the Clerk of Court, and the Court Reporter other than the pronounced stipulation's indicated on the sentencing sheet regarding the term of service, the only other action so ordered by the Court, was granting the appellant 257 days jailtime credit(s) pursuant to S.C. Code § 24-13-40.

(2) Unbeknowst to the appellant, The S.C. Dept. of Corrections without informing the appellant, enhanced his Court imposed non-violent sentence administratively to that of a violent offender, mandating he serve 85% of his sentence, in addition making him ineligible for other earned credits otherwise relized as a non-violent offender, such as he was ordered by the Courts.

(3) Two months and several "Request to Staff" forms later, the appellant filed an inmate Grievance form step 1, dated 7-3-11, opposing the change in classification.

(4) On 7-25-2011, the appellant received the return answer of his grievance, denying his claim based upon SCDC classification policy, and his past criminal record.

(5) On 7-28-11, the appellant appealed the decision with the timely filing of inmate grievance from step 2, opposing the decision in its entirty, based on the order handed down in a judicial proceeding, by the sitting judge.

(6) On 10-21-2011, the appellant received the return answer of I/M grievance from step 2, that summarily denied his grievance, stating once again the decision to classify him as a violent offender was due to his past conviction.

(7) On 11-9-2011, the appellant filed a notice of appeal with the administrative law Court, from the final decision of the D.O.C., wherein the Court, being frustrated during this process, ordered the respondent on two (2) seperate occassions to supplement the record in attempts to further understand their reasoning for their decision.

ARGUMENT

In its response dated March 16, 2012, the respondent stated that "despite appellant's current offense being classified as non-violent, consistent with SCDC policy, appellant has been classified as a violent offender due to his prior offense", relevant to SCDC policy/procedure No.:OP.21.09 §14.13 and 14.14, issue date November 1, 2007. The appellant contends that this particular policy in it's construction and application is in direct contrast to the Omnibus Crime reduction and Sentencing Reform Act inacted June 2, 2010, and the sentence or judgement entered upon the record of the Court on 5-9-2011, causing in to run afoul of the double jeopardy clause as interpreted. James v. S.C. Dept. of Transportation, 711 S.E.2d 919, 393 S.C. 440 (SC App. 2011), held that Courts apply the same rule of construction used to interpret statues stating that;

> "civil rules should not be written or interpreted to create a trap for the unwary lawyer or party; however the language of a statue must also be read in a sense which harmonizes with its subject matter and accords with its General Purpose."

which in this instance, it clearly does not.

As a result of the violent classification of the appellant, SCDC has subjected the appellant to further custody by mandating he serve 85% of his sentence which would not ordinarily be required of inmates sentenced as non-violent offenders, as the appellant was. In addition as a direct result of the classification as a violent offender, the appellant is also subjected to Post-Released Supervision whereby admitting of the possibility of Revocation and Additional jail time is considered to be "custody". see Jones v. Cunningham, 37, u.s. 236, 240-43, 83 S.Ct. 373, 9 L.ED.2d. 285 (1963)

When the sentence as imposed by the sentencing Judge is purportedly altered to reflect something other than the sentence imposed, the source of that alteration is immaterial whether it is SCDC Administration or the operation of South Carolina Law that works the alteration, the alteration is of no effect. As previously stated, "only the judgement of a Court, as expressed through the sentence imposed by a Judge has the power to constrain a person's liberty, and that judgement includes only those terms expressly imposed. Early, 451 F.3d 75 (2d cir 2006)

If or when a Judge fails to impose a custodial element of sentence, that element is not a part of the sentence, regardless of whether that failure was due to over sight or to customary practice. Early Supra, 451 F.3d 71, 76 (2d cir 2006)

Whatever conceptualization the respondent has about the function of S.C. Code of Laws § 16-1-60 and its on policy "OP-21.09", they cannot operate to undermine protections contained in The Federal Constitution. In Hill v. Wampler 298 U.S. (1936) the Court requires the custodial terms of sentence to be explicitly imposed by a Judge, any practice to the contrary is simply unconstitutional and cannot be upheld.

The appellant concedes the respondent clearly has the right to take notice of its own policy and records, but had no duty to grind the same corn twice" in terms of its classification of the appellant based on a previously completed sentence.

"If a term of imprisonment can be shortened or modified by rights conveyed under state law, those rights cannot be denied "O'Bar v. Pinion, 953 F2d 74 (4th cir. 1991)

The fact that SCDC policy mandates a different sentence that the one imposed may render the sentence in direct contrast to its policy, but it does not change it. The sentence imposed remains the sentence to be served unless and until it is lawfully modified.

CONCLUSION

The appellant therefore prays after review of the record, This Honorable Court grants the relief sought by returning his classification to that non-violent preserving the appellant's Federal and State Constitutional rights.

So Prays The Appellant

S Dazzelle Smith

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Proof of Service

The appellant, aboved named, proceeding pro-se, submits and certifies that he has served a copy of the appellant's initial brief; to the respondent by way of their counsel, in the forgoing action by depositing a copy of the same in the institutions mailroom for delivery via the U.S. Postal Service, or in the interagency mail service address to the Office of General Counsel, PO Box 21787/4444 Broad River Rd. Columbia, SC 29221/1787

Submitted This ____ Day of May

S/ Dazzelle Smith

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