

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPELLATE CASE NO: 2013-000482

APPEAL FROM THE ADMINISTRATIVE LAW COURT
HONORABLE SHIRLEY C. ROBINSON
ADMINISTRATIVE LAW JUDGE

APPEAL FROM FINAL DECISION
S. C. DEPT OF CORRECTIONS

12-ALJ-04-0853-IJ

GRIEVANCE: KRCI 301-12

CURTIS RICHARDSON # 269166

APPELLANT

V

S C DEPARTMENT OF CORRECTIONS

RESPONDENT

BRIEF OF APPELLANT

I SWEAR UNDER PENALTY OF PERJURY THE CONTENTS
OF THIS BRIEF ARE TRUE AND CORRECT

SWORN TO BEFORE ME THIS
2 DAY OF April 2013

MY COMMISSION ENTIRE
Catherine A. Ormaz

NOTARY PUBLIC OF SOUTH CAROLINA

st Curtis Richardson
CURTIS RICHARDSON
269166 PB47
4848 GOLDMINE HWY
KEESHAW SC 29067

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL iii

STATEMENT OF THE CASE 1

ARGUMENTS 2, 3, 4, 5

1. DID THE RESPONDENTS FAILURE TO RESPOND TO THE APPELLANTS MOTION RENDER DEFAULT JUDGMENT?
2. DID THE RESPONDENTS FAILURE TO RESPOND TO APPELLANTS STEP 2 EXHAUST ADMINISTRATIVE REMEDIES?
3. DID THE SCDJ'S CHANGING APPELLANTS SENTENCE FROM NONVIOLENT AND PAROLE ELIGIBLE TO VIOLENT AND NOT PAROLE ELIGIBLE CONSTITUTE AN EX POST FACTO VIOLATION

CONCLUSION

6

TABLE OF AUTHORITIES

CASES

ALLEN V LOWDER 875 F2D 82 (4TH CIR 1989)

BROWN V EVATT 470 SE2D 848

CAIFFIN V STATE 433 SE2D 862

JERNIGAN V STATE 531 SE2D 507

LANCE V MATHIS 717 SGT 891 (1997)

FEMDER V THOMPSON 883 F2D 303 (4TH CIR 1989)

MELVIN V NIKOLOPOULOS 864 F2D 301

SHAWANZ V MUNCEP 834 F2D 396 (4TH CIR 1987)

WARDEN V MARRERO 94 SGT 2532

WEAVER V GRAHAM 101 SGT 960

ROLLER V CAWANNUGH 984 F2D 120 (4TH CIR, CT APP)

PAINE V BAKER 595 F2D 197 (4TH CIR 1979)

ELMORE V STATE 409 SE2D 397

STATUTES

SC RULES OF CIVIL PROCEDURE 65 (F) (1)

SC CODE ANN 24-21-620

ADMINISTRATIVE LAW COURT RULE 63.

INMATE GRIEVANCE POLICY RESPONSES 11. RESPONSES

STATEMENT OF ISSUES ON APPEAL

1. DID THE RESPONDENTS FAILURE TO RESPOND TO THE APPELLANTS MOTION RENDER DEFAULT JUDGMENT?
2. DID THE RESPONDENTS FAILURE TO RESPOND TO APPELLANTS STEP 2 EXHAUST ADMINISTRATIVE REMEDIES?
3. DID THE SCD C'S CHANGING APPELLANTS SENTENCES FROM NONVIOLENT AND PAROLE ELIGIBLE TO VIOLENT AND NOT PAROLE ELIGIBLE CONSTITUTE AN EX POST FACTO VIOLATION?

STATEMENT OF THE CASE

IN SEPTEMBER 2011. I WAS SENTENCED TO (5) FIVE YEARS IN PRISON NONVIOLENT AND PAROLE ELIGIBLE BY THE MORAY COUNTY COURT OF GENERAL SESSIONS.

LUPON ADMISSION TO THE SCDC. THE SCDC CHANGED MY COURT ORDERED SENTENCE TO VIOLENT AND NOT PAROLE ELIGIBLE.

BASED ON THIS ADMITTEDLY FALSE INFORMATION I WAS DENIED A TIMELY HEARING AND SUBJECTED TO AN ILLEGAL SENTENCE UNDER THE EX POST FACTO PROHIBITION

ARGUMENT 1

RESPONDENTS FAILURE TO RESPOND TO APPELLANTS MOTION RENDERED DEFAULT JUDGMENT.

PRIOR TO THE ALJ DISMISSAL. (ADMINISTRATIVE LAW JUDGE, APPELLANT FILED A MOTION FOR RELEASE FROM PRISON AND AWARD OF DAMAGES. THIS MOTION WAS DATED DECEMBER 26, 2012 AND TIMELY AND PROPERLY SERVED ON THE COURT (ALC) AND RESPONDENTS WHO AS OF THE CURRENT DATE FILED NO RESPONSE.

PURSUANT TO RULE 63 AND 62 OF THE ALC, THE ALJ SHOULD HAVE GRANTED RELIEF IN APPELLANTS FAVOR.

HOWEVER, WITHOUT EVEN A RULING ON APPELLANTS MOTION THE ALJ DISMISSED THE APPEAL ERRONEOUSLY.

ARGUMENT 2.

THE FAILURE TO RESPOND TO APPELLANT'S STEP 2 AS OF THE CURRENT DATE EQUALS AN EXHAUSTION OF THE SCDC ADMINISTRATIVE GRIEVANCE REMEDIES.

THE STEP 2 WAS FILED IN MARCH OF 2012, HOWEVER THE RESPONDENTS HAVE FAILED TO ANSWER THE STEP 2 IN VIOLATION OF THEIR OWN SCDC ESTABLISHED POLICY (SEE ATTACHEE) EXHIBIT C

THEREFORE, THIS HONORABLE COURT SHOULD DEEM THE GRIEVANCE PROCEDURE IS EXHAUSTED AS APPELLANT SHOULD NOT HAVE TO WAIT FOREVER FOR RESPONDENTS RESPONSE.

THIS COURT SHOULD RULE THAT IT WILL NOT TOLERATE THE RESPONDENTS FAILURE TO ANSWER TO ITS OWN ESTABLISHED POLICY.

ARGUMENT 3.

UPON ADMISSION TO THE SCDC, THE SCDC CHANGED MY COURT ORDERED SENTENCE TO VIOLENT AND NOT PAROLE ELIGIBLE IN VIOLATION OF THE EX POST FACTO CLAUSE.

BASED ON THIS ADMITTEDLY FALSE INFORMATION I HAVE BEEN DENIED PAROLE ELIGIBILITY AND DENIED A PAROLE HEARING AND EQUAL PROTECTION AND APPLICATION OF LAW.

(DENIAL OF PAROLE BASED ON ADMITTEDLY FALSE INFORMATION DENIES DUE PROCESS) SEE *PAINE V BAKER* 595 F2D 197 4TH CIR 1979 CERT DENIED 444 US 925. ALSO SEE *MONROE V THIGHPEN* 932 F2D 1437.

24-21-620 ESTABLISHES "WITHIN 90 DAYS PRECEDING HAVING SERVED 1/4 OF HIS SENTENCE THE BOARD EITHER ACTING IN A THREE-MEMBER PANEL OR MEETING AS A FULL BOARD SHALL REVIEW THE CASE!"

I THEN BEGINNING IN SEPTEMBER 2011 STARTED MY COMPLAINTS VIA GRIEVANCE PROCEDURE.

HOWEVER THE SCDC GRIEVANCE PROCEDURE IS EXHAUSTED AS STEP 2 WAS FILED FEBRUARY 2012.

4.

AS FOR PAROLE ELIGIBILITY AND NONVIOLENT AS PART OF PLEA 1 I WAS ADVISED BY COUNSEL AND COURT THAT I WOULD BE SAME.

HOWEVER THE SCDC HAS FAILED TO REPLY AS OF THE CURRENT DATE IN VIOLATION OF THE 214 DAYS TIME LIMIT TO COMPLETE THE SCDC GRIEVANCE PROCEDURE RESPONSES

ALTERNATIVELY PCA COUNSEL HAS STATED THAT HE "CAN NOT AND WILL NOT RAISE THIS ISSUE ON PCA"

MY SENTENCE HAS BEEN ILLEGALLY ALTERED EXTENDED AND ENHANCED AND MY CLASSIFICATION / CUSTODY INTENSIFIED BY SCDC

PETITIONER RELIES ON BROWN V EDATT 470 SE2D 848, FENDER V THOMPSON 883 F2D 303 (4TH CIR 1989), ROLLEN V CAVANAUGH 984 F2D 301, WEAVER V GRAHAM 101 SCT 960, WARDEN V MARLER 94 SCT 2532, SCHWARTZ V MUNCY 834 F2D 396 (4TH CIR 1987) "ALL IN SUPPORT OF HIS POSITION."

ALSO SEE GRIFFIN V STATE 433 SE2D 864, LYNCE V MATHE 117 SCT 891 (1997), JENNIGAN V STATE 531 SE2D 507. ALSO SEE ELMORE V STATE 409 SE2D 397, WHERE THE COURT HELD "PROVIDING INCREASED PAROLE ELIGIBILITY TIME WOULD RESULT IN AN EX POST FACTO VIOLATION."

CONCLUSION

THIS HONORABLE COURT ISSUE AN ORDER GRANTING RELEASE FROM PRISON AND DAMAGES PURSUANT TO RULE 65 (F) (1) AS PETITIONER IS SUBJECTED TO AN ILLEGAL SENTENCE BASED ON THE SCID (APPLICATION OF EX POST FACTO LAW) TO SENTENCE AND ANY OTHER RELIEF DEEMED JUST AND PROPER WITHIN THE JURISDICTION OF THIS COURT.

6
Curtis Richardson

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPELLATE CASE NO: 2013-000482

APPEAL FROM THE ADMINISTRATIVE LAW COURT
HONORABLE SHIRLEY C. ROBINSON
ADMINISTRATIVE LAW JUDGE

APPEAL OF FINAL DECISION
S C DEPARTMENT OF CORRECTIONS

CURTIS RICHARDSON

APPELLANT

✓

S.C. DEPT OF CORRECTIONS

RESPONDENT

PROOF OF SERVICE

THIS IS TO CERTIFY THAT I SERVED ~~BY~~ A COPY OF ORIGINAL BRIEF OF APPELLANT ON THE FOLLOWING PARTIES BY PLACING A COPY OF SAME IN THE U.S. MAIL POSTAGE PREPAID ON MARCH 31, 2013 ADDRESSED

HONORABLE V CLAIRE ALLEN
DEPUTY CLERK COURT OF APPEALS
1015 SUMNER ST
COLUMBIA SC 29201

CHRISTOPHER D. FLORIAN
OFFICE OF GENERAL COUNSEL
4444 BADAW RIVER Rd
COLUMBIA SC

JANA SHEALY
ADMINISTRATIVE LAW COURT
1205 PENNINGTON ST suite 224
COLUMBIA SC

SI Curtis Richardson

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
APPELLATE CASE NO: 2013000482

HONORABLE SHIRLEY C. ROBINSON
ADMINISTRATIVE LAW JUDGE

CASE NO: 12-ALJ-04-0853-IJ
GUE NO: KRCI-0301-12

CURTIS RICHARDSON

APPELLANT

S.C. DEPT OF CORRECTIONS

VS

RESPONDENT

MOTION AND AFFIDAVIT FOR LEAVE TO PROCEED IN FORMA PAUPERIS

PURSUANT TO EX PARTE LEXINGTON COUNTY 442 SE2D 589, LONG V IOWA 87 SCT 362, GRIFFIN V ILLINOIS 76 SCT 585, LANE V BROWN 83 SCT 768, WILLIAMS V ST. LOUIS COUNTY 812 F2D 1079 APPELLANT DUE TO INDIGENCY MOVES TO PROCEED WITHOUT PREPAYMENT OF FILING FEE IN THIS MATTER (SEE SCDC FINANCIAL CERTIFICATE)

OTHER COUNSEL OF RECORD:

DAVID TATANSKY
OFFICE OF ATTORNEY GENERAL
P.O. BOX 21787
COLUMBIA SC 29221

HONORABLE SHIRLEY ROBINSON
ADMIN LAW JUDGE
1205 PENDLETON ST, SUITE 224
COLUMBIA SC 29201

FEBRUARY 25, 2013

S / Curtis Richardson

RECEIVED MAP 8, 13
MAY 8 11



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 06, 2013

Curtis D. Richardson, 00269166
KCI 4848 Goldmine Highway
Kershaw SC 29067

Re: Curtis Richardson v. SCDC (6)
Appellate Case No. 2013-000483

RECEIVED
MAY 8 0 2013

Dear Counsel:

SC Court of Appeals

Upon reviewing your appellant's initial brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document has not been signed as required by Rule 267(b), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Christopher D. Florian