

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson III Administrative Law Judge

ALC Case No. 22-ALJ-04-0113-AP
Appellate Case No. 2022-801331

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DEC 09 2022

SC Court of Appeals

William Cathcart, * JUDGE,

APPELLANT,

v.

South Carolina Department of Corrections,

RESPONDENT,

FINAL BRIEF

Date: 12-05-22

William Cathcart
APPELLANT

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Table of Contents

| | |
|--|------|
| Table of Authorities..... | ii |
| Statement of the Issues on Appeal..... | 1. |
| Statement of the Case..... | 2. |
| Argument..... | 3+4. |
| Conclusion..... | 4. |

Table of Cases

| | | |
|-------------------------------------|--|---------|
| Hill v. United States exel. Wampler | 298 U.S. 460 56 S. Ct. 760 | pg 3. |
| Earley v. Murray | 462 F. 3d 147 (2 nd Cir) | pg 3. |
| U.S. v. Marques | 506 F. 2d 620 622 (2 nd Cir-1974) | pg 4. |
| U.S.C.A. Amend 14 | | pg 1+3. |

Statement of the Issues on Appeal

The Appellant has a protected Due Process right under the United States Constitution to be sentenced to the pronounce sentence of Judge Kinard which was thirty years at 85% of service. USCA 14, Amendment

Statement of the Case

The Appellant William Cathcart, # 249565, was told by a SCOC caseworker that he was sentenced to a thirty year mandatory sentence. The Appellant reviewed his sentencing transcript and discovered that the Honorable Judge Kinard sentenced him to thirty years at 85% of service. The Appellant filed a Step 1 Grievance alleging that the sentencing court sentence him to 30 years 85% and the Respondent doesn't have the authority to modify the sentence on January 13, 2022. The Step 1 Grievance was denied on February 15, 2022. The Appellant filed a Step 2 alleging the violation on February 21, 2022. The Step 2 Grievance was denied on March 31, 2022. The Appellant appeal to the Administrative Law Court. The Honorable Judge Anderson denied the appeal on August 29, 2022. This appeal follows.

ARGUMENT

The Respondent enforcement of a mandatory thirty years sentence violates the Appellants Due Process Rights. When the sentencing court did not impose a mandatory sentence at sentencing hearing. Under the U.S. Constitution U.S.C.A. Const. Amend 14

The Honorable Judge Kinard sentenced the Appellant to thirty years 85% on May of 1998. (See R&A Transcript pg 67 Lines 24+25 pg 68 lines 1 thru 3 and pg 5 lines 18 thru 23.) However the Respondent calculated the Appellant sentence as a mandatory thirty years. The Appellant avers that this is an error that is forbidden by the U.S. Constitution and U.S. Supreme Court precedence. The United States Supreme Court held in Hill v. United States exrel. Wampler 298 U.S. 460 56 S.Ct. 760. ("The only sentence known to the law is the sentence or judgment entered upon the records of the court.") The Respondent ignored the fact that they do not have the authority to change a Judges sentence. In Earley v. Murray 462 F.3d 147 (2nd Cir.). The U.S. Court of Appeals held ("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 Correctional service administrators or the operation of New York Law that works the alteration, the alteration is of no effect.") (The Respondent position is that by the operation of State Law the Mandatory sentence apply. The fact that the Federal Constitution Due Process Clause commands that a judicially imposed sentence includes only those elements explicitly ordered by the sentencing Judge can't be ignored. Earley v. Murray.) The undisputed fact is that Judge Kinard sentenced the Appellant to thirty years at 85%. (See R&A Transcript pg 67 lines 24+25, pg 68 lines 1 thru 3, and pg 5 lines 18 thru 23.) The only sentence known to the law is the sentence or Judgment entered upon the records of the courts; until corrected in a direct proceeding, it says what it was meant to say and this by an irrebuttable presumption. Any alteration to that sentence unless made by judge in a subsequent proceeding, is of no effect. See: Earley v. Murray 451 F.3d 71 (2nd Cir.). The only way that the

Appellant sentence can be altered is by another judge not the respondent. When Judge Kinard colloquy with Appellant he orally specified that Appellant will be sentenced to 85% of service. (See RBA Transcript pg 67 lines 24+25, pg 68 lines 1 thru 3, and pg 5 lines 18 thru 23.) Holding that the oral sentence constitutes the judgment of the court and that it is that sentence that provides the authority for the execution of the sentence. (See U.S. v. Marques 506 F.2d 620 622 (2d Cir-1974).

Conclusion

The Appellant respectfully request that this court reverse and remand with instruction to release from custody

Date: 12.05.22

Respectfully Submitted
William Centeant
APPELLANT

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South Carolina Department of Corrections,

RESPONDENT,

CERTIFICATE OF COUNSEL

I William Cathcart #249565 hereby certify that
the Final Brief complies with Rule 211(b) SCACR.

Date: 12-05-22

William Cathcart
APPELLANT