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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2022-001601

Charles Eugene Carpenter, #181783,.....Appellant,

v.

South Carolina Department of Corrections,..... Respondents,

INITIAL BRIEF OF APPELLANT

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR APPELLANT

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ISSUES ON APPEAL

- I. Did the Administrative Law Court err as a matter of law in failing to recognize the substantial rights of Appellant in the good time and work credits previously applied for Appellant against his remaining sentence?

- II. Did the Administrative Law Court err as a matter of law in failing to recognize that due process rights of Appellant include, but are not limited to, procedural rights and thus any alleged cure of procedural failures still leaves substantive legal issues to be addressed?

- III. Did the Administrative Law Court err in concluding that Appellant failed to establish a claim for an equal protection violation by failing to recognize the ongoing violation to which Appellant remains subject while another similarly situated inmate continues to be allowed to fully retain and enjoy the benefits to which Appellant is denied?

STATEMENT OF THE CASE

This matter is pending before the Court of Appeals pursuant to an appeal from an Administrative Law Court order affirming a decision by the South Carolina Department of Corrections (hereinafter “SCDC”).

Appellant Charles Eugene Carpenter (“Carpenter”) is an inmate within SCDC who filed a Step 1 Grievance on November 20, 2019, requesting that SCDC restore good time and work credits he had been credited with previously. R. _____. On November 28, 2019, the Warden rejected the grievance based on the mandatory nature of Carpenter’s imposed sentence. R. ___. Carpenter then filed a Step 2 Grievance on December 4, 2019, again requesting to have his good time and work credits used as part of his sentence calculation. R. _____. The grievance was denied on December 20, 2019, with notice to Carpenter delivered on January 9, 2020. *Id.* Carpenter timely filed a Notice of Appeal with the Administrative Law Court (“ALC”) on February 7, 2020.

The record on appeal was filed with the ALC on May 12, 2020, and Carpenter filed his Appellant’s Brief with attached exhibits on June 15, 2020. R. _____. On July 2, 2020, SCDC filed a motion to hold the ALC proceedings in abeyance due to the Appellant’s separate litigation against the State of South Carolina, which at that time was pending on appeal before the S.C. Court of Appeals.¹ R. _____. On July 27, 2020, the ALC granted the motion. R. _____. On January 31, 2022, the ALC lifted the stay. R. _____. Respondent SCDC then filed its brief and a motion to supplement the record.

¹ Carpenter still has a separate pending action that was initially filed in Richland County Court of Common Pleas (Case # 2016-CP-40-6916). It is still pending in the circuit court, following remand from the South Carolina Court of Appeals. *See Carpenter v. S.C. Dep’t of Corr.*, 431 S.C. 512, 848 S.E.2d 346 (Ct.App.2020) (affirming in part, vacating in part, and remanding for further proceedings). In that circuit court action, Carpenter is challenging the propriety of the multiple sentencing hearings/proceedings held after entry of his guilty plea in 1990, and the consecutive sentence structure purportedly imposed thereby that is currently being enforced by SCDC.

On March 9, 2022, the ALC instructed the parties to brief two identified issues. R. _____. Appellant Carpenter and Respondent both submitted briefs, and the parties thereafter had a conference call with the presiding judge at the ALC. The result of the call was an order dated April 19, 2022, staying the ALC matter pending the circuit court's ruling on a pending motion by Carpenter in the separate circuit court litigation. R. _____. Following resolution of that motion in the circuit court, the ALC issued an order dated October 14, 2022 that:

1. Permitted supplementation of the record;
2. Dismissed the matter to the extent it raised issues that are proper for PCR consideration;
3. Dismissed Appellant's claim as to a liberty or property interest in the credits;
4. Dismissed any claims premised upon due process violations on the basis that Appellant had now received adequate due process in relation to SCDC removal of credits previously;
5. Determined that Appellant failed to establish a claim for equal protection related to the credit removal; and
6. Affirmed the agency determination. R. _____.

Appellant thereafter timely filed a Notice of Appeal on _____, 2022.

FACTS²

Carpenter is currently confined in the Ridgeland Correctional Institution. He was arrested on November 27, 1989 and charged with multiple drug offenses. On April 7, 1990, Carpenter entered a plea agreement with the State to resolve his multiple outstanding charges. As part of that agreement, Carpenter pleaded guilty and was convicted of one charge pursuant to S.C. Code. Ann. § 44-53-370(e)(2)(e) for trafficking cocaine, and one charge pursuant to S.C. Code. Ann. § 44-53-

² Although facts are set forth herein, a more comprehensive recitation of background information and facts is included with the Court of Appeals decision issued in *Carpenter v. S.C. Dep't of Corr.*, 431 S.C. 512, 515-19, 848 S.E.2d 346, 347-50 (Ct.App.2020).

370(e)(1)(d) for trafficking in marijuana. Although the sentences imposed on Carpenter are the subject of separate litigation as referenced in footnote 1, the sentencing sheets included within the record on appeal (R. ___) are currently interpreted and being enforced/applied by SCDC as imposing consecutive 25-year sentences for the two convictions.

For an extended period following Carpenter's remand to their custody, SCDC tracked the accumulation of good behavior credits against time served, and allowed Carpenter to earn additional work credits. In Carpenter's 1993 Offender Summary (R. _____), SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." R. _____. However, SCDC subsequently and unilaterally, and admittedly, removed those good time and work credits that Carpenter had previously earned and enjoyed on his record without formal notice or hearing as to the propriety of such actions.

Carpenter's Step 1 grievance asks that the warden "put Good time and work credit BACK on my record" and that the agency "took my Good time and work credit." (R. ____). Ultimately, the Step 2 official decision indicates Carpenter's "sentence was modified in 2011." (R. ____). Carpenter did not have a hearing at the time his sentence was allegedly "modified."

Bobby G. Horne (hereafter "Horne") was arrested in connection with the same course of events as was Carpenter, and also pleaded guilty to a violation of S.C. Code Ann. § 44-53-370(e). R. _____. Horne's plea was to trafficking in cocaine, and was included as part of Case No. 90-GS-47-5002, the same case under which Carpenter pleaded guilty to trafficking in cocaine. Horne was also sentenced to 25 years under § 44-53-370(e) for that offense, as was Carpenter. Horne's sentence for trafficking in cocaine and circumstances otherwise were therefore identical to Carpenter's.

Likewise, Horne was given sentence credits for good time served, pursuant to S.C. Code § 24-13-210, earned work credits pursuant to S.C. Code § 24-13-230, was deemed eligible for parole, was eligible for work release, release, and supervised furlough. Horne was actually released from active custody to supervised furlough on August 30, 2001, and his sentence terminated completely on March 1, 2002. R. ____.

ARGUMENT

I. CARPENTER HAD SUBSTANTIAL RIGHTS IN THE GOOD TIME AND WORK CREDITS PREVIOUSLY GIVEN EFFECT FOR HIS BENEFIT AGAINST HIS REMAINING SENTENCE, WHICH WERE A PROTECTED LIBERTY INTEREST.

“[T]hough his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country. *Wolff v. Donnell*, 418 U.S. 539, 555-556, (1974). SCDC cannot remove earned credits from an inmate’s record once they have been earned. *Furtick v. S.C. Dep’t of Corr.*, 374 SC. 334, 549 S.E.2d 35 (2007). “The statutory right to sentence-related credits is a protected ‘liberty’ interest under the Fourteenth Amendment, entitling an inmate to minimal due process to insure the state created right was not arbitrarily abrogated.” *Id.* 649 S.E.2d 37. In *Furtick*, the South Carolina Supreme Court quoted from *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445,454, 105 S. Ct. 2768, 86 L.Ed.2d 356 (1985) to state “[w]here a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus, the inmate has a strong liberty interest in assuring the loss of good time credits is not imposed arbitrarily.”

The ALC order cites *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327,605 S.E.2d 506 (2004) for its conclusion that the ALC may dismiss appeals where “the inmate’s grievance does not implicate a state-created liberty or property interest.” R. ___ [order p. 9]. However, there is no authority cited to support the ALC’s erroneous legal presumption and conclusion that “state-created” necessarily and exclusively means credits capable of being accrued and/or used in a statutorily created manner. The ALC order as a result is subject to an error of law when it states that “under the specific facts of this case, good-time and/or work credits which may or may not have been earned by Appellant *cannot be used* and have no value.” (emphasis added). R. ___ [order p. 8].

Under the specific facts of this case, SCDC cannot dispute that it dutifully tracked, tallied, and publicized via offender summaries the credits afforded and implemented specifically to Carpenter (and others) over an extended period. They did so through no fault, bad faith, or enticement on the part of Carpenter. The direct actions in furtherance of the grant and application of credits were by the State through many different actors, at minimum incentivizing good behavior (to the State’s benefit) and outright extracting labor from Carpenter, not with mere innuendo or vague notions of favor, but with official statements of credit that for years actually reduced the length of incarceration. The importance of how the State treated Bobby Horne, by applying credits to an extent that he was released from confinement, at the time in full knowledge of Carpenter and without any State effort to retract the same benefits afforded to Horne either before or after his release, means the tallied and publicized interests being granted by the State to Carpenter in the form of credits were not merely bits of code in a computer system.

Rather, in that full context, SCDC made the credits even more weighty and with immediate effect. That is true regardless of whether they were statutorily provided for, lawfully intended or

supplied, or otherwise could have been affirmatively demanded for provision by Carpenter in the absence of such circumstances.

Accordingly, the good time and work credits had *already been used* for Carpenter's benefit, and were not, by law, mere objects for speculative future application, as the ALC order dismisses them when it deems their acknowledged existence under consideration "a mere academic question." R. ___ [p. 6 of order]. There was no lawful basis for SCDC to summarily attempt to rescind its actions and "unring the bell" for the reality it already had brought to fruition merely on account of Carpenter being an inmate without an express statutory basis to have arrived at the position in which he had been and remained for years and years.

II. MERE NOTICE OF A WRONGFUL TAKING OF CARPENTER'S CREDITS AFTER THE FACT WAS INSUFFICIENT TO CURE ALL DUE PROCESS VIOLATIONS INHERANT IN THEIR TAKING.

The ALC order correctly notes that Appellant had cited to *Tant v. South Carolina Department of Corrections*, 408 S.C. 334, 759 S.E.2d 398 (2014) as part of its basis for alleging Carpenter's due process rights were violated when SCDC removed the credits that had been afforded him for years prior to 2011. R. ___ [order p. 9]. However, the ALC order erroneously reduces the *Tant* opinion and reference thereto as relating to mere procedural process guarantees, rather than the appropriate full import of that opinion. *Tant*, appropriately understood, references procedural due process measures as the means to ensure substantive due process and other legal issues implicated under the facts in question could be considered.

The ALC order provides that "Even assuming SCDC violated Appellant's rights by failing to follow proper procedure," then subsequent consideration by the ALC was sufficient to "cur[e] any deficiency related to procedural due process." R. ___ [Order p. 10]. It was an error of law by the ALC to determine that alleged cure of procedural issues carried with it resolution of substantive issues as

well. In contract, beyond the procedural announcements as to how such matters should be handled thereafter, a more practical and substantive issue was ultimately reached and determined by the *Tant* Court: the proper calculation of Mr. Tant's sentence that had been imposed upon his conviction. *See Tant*, 759 S.E.2d at 404 ("Furthermore, we find in this case that both the sentencing sheets and the transcript are ambiguous, and therefore, Tant's sentences must be construed to run concurrently.").

In this instance, Carpenter's fault with SCDC's actions attacks substantive failures to treat him in accordance with the law as discussed in Section I of this brief, beyond and an addition to SCDC having acted in secret without formal notice and immediate scrutiny of such actions in violation of procedural due process obligations. As such, the procedural aspects of notice failure may have, as the ALC opinion correctly determined, become moot at this point. However, that can only be true to the extent that the substantive issues raised by Carpenter are fully considered and corrective, restorative legal action demanded by their merit and substance is taken for his benefit.

III. EQUAL PROTECTION VIOLATIONS WERE MISSED ON THE BASIS OF ERRORS OF LAW AND CONCLUSIONS DRAWN ARBITRARILY WITHOUT FACTUAL BASIS IN THE RECORD.

The Equal Protection Clause states, "No State shall... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, (2000) (internal quotation marks and alteration omitted). Further, the validity of "class of one" Equal Protection claims has been recognized where a claimant "alleges

that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Id.*

The ALC opinion is correct in stating that Carpenter “has not argued that this case involves any traditional suspect classifications, such as race, religion, or nationality.” R. ___ [Order p. 11]. Rather, Carpenter noted his similarity with Bobby Horne, the details of which are set forth in more detail in the Facts section *supra* clearly cement their “similarly situated” status with respect to each other, noting the distinctively different treatment between them at the hands of SCDC, which is without even a rational basis of support sufficient to justify that difference.

Carpenter does not allege they were treated differently while both were incarcerated. To the contrary, he acknowledges both were given the same sort of work and good time credits. The disparate treatment begins when Horne is released, locking in the vested nature of credits being given at the time for both he and Carpenter, as described in Section I above. But the disparate treatment continues to present, while Horne continues to enjoy his release from confine without any effort on the part of SCDC to correct their actions, which they admittedly view as having been improper. Yet meanwhile, not only has SCDC ceased to credit Carpenter, but they have taken procedurally deficient means to claw back realized substantive benefits from Carpenter. See Section II *supra*.

The ALC opinion states that SCDC was “unable to correct the error on Horne’s record because Horne had already been released.” R. ___ [Order p. 12]. There is no evidence of any such inability within the record, and any conclusion asserting as such by the ALC would be arbitrary conjecture as well as clearly erroneous in light of the reliable, probative and substantial evidence that is within the record. SCDC is custodian of its own records, and it surely can change

them at any point. Instead, Horne has not had his record changed while Carpenter's has to great present and lasting consequence, not just hypothetical or non-existent detriment.

Further, the ALC statement that "If Horne were still in prison in 2011, he too would be treated in the same manner as was Appellant" is pure conjecture, not grounded in any factual basis within the record, and unmoored from any legal basis that would otherwise justify such a conclusion to justify the ongoing disparate treatment of Carpenter and Horne.

CONCLUSION

For the reasons set forth more fully above, Appellant contends that his claims were not given full and fair consideration under correct application of South Carolina law and the record before the Administrative Law Court. Appellant therefore prays for an order reversing the decision of that court which resulted in dismissal of his claims, and for remand of the matter for further proceedings.

Respectfully submitted,

s/ Harvey M. Watson III

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

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