

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 26 2023

Appeal from the Administrative Law Court ^{SC Court of Appeals}

Deborah B. Durden, Administrative Law Judge

Appellate Case No. 2023-001384

Ronald Ceo, #258464,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF
OF THE APPELLANT

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Appellant Pro Se

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TABLE OF AUTHORITIES

Constitutional Amendments:

U.S.C.A Const. Amend 14	Pgs 3, 4, 6
S.C. Const. Art. I, §8	Pg. 3

Case Law:

State v. Archie, 322 S.C. 135, 470 S.E.2d 380. Pg. 4

Hill v. U.S. ex rel Wampler, 298 U.S. 460, 56 S.Ct. 760. Pg. 4

Johnson v. Mabry, 602 F.2d 167, 170 (8th Cir. 1979) Pg. 5

Earley v. Murray II, 462 F.3d 147 (2nd Cir. 2006) Pg. 5

STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERRED WHEN IT DID NOT FOUND THAT THE RESPONDENT EXERCISE OF JUDICIAL FUNCTION BY THE IMPOSING OF COMMUNITY SUPERVISION TO THE APPELLANT SENTENCE WHEN THE SENTENCING COURT DID NOT SENTENCE THE APPELLANT TO COMMUNITY SUPERVISION VIOLATED THE S.C. CONSTITUTION ART. I, § 8 SEPARATION OF POWERS AND THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION U.S.C.A. Amend. 14.

STATEMENT OF THE CASE

The Appellant file a Step 1 grievance on September 9, 2022. The Grievance was based on the fact that the Respondent was enforcing Community Supervision, when the Court or Sentencing Transcript did not mention it as being any part of the Appellant sentence. The Respondent denied the Step 1 Grievance on October 3, 2022. The Appellant file the Step 2 Grievance on October 4, 2022 alleging that the Respondent are forbidden to enforce a unpronance penalty to the Appellant sentence. The Step 2 Grievance was denied on November 30, 2022. The Appellant filed his Notice of Appeal to the Administrative Law Court on January 4, 2023. The Administrative Law Judge, Judge Durden issue an order denying the Appellant appeal on August 15, 2023. This Appeal follows:

THE U.S. CONSTITUTION AND S.C. CONSTITUTION FORBIDS THE RESPONDENT FROM ENFORCING AN UNPROMISED PENALTY TO THE APPELLANT SENTENCE. U.S.C.A. Const. Amend. 14; S.C. Const. Art. I, § 8.

ARGUMENT

The Appellant was sentenced to thirty five years (35) imprisonment by the Honorable Judge Barber. The Appellant former Counsel, the Solicitor, or the Sentencing Judge did not mention anything at all during sentencing that Community Supervision being part of the Appellant Sentence. (See R.O.A. Sentencing Sheet and Sentencing Transcript). Respondent enforcement of Community Supervision to the Appellant sentence violates S.C. Constitution Art. I § 8 Separation of Powers which provides in relevant part: (In the government of this state the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the function of one departments shall assume or discharge the duties of any other.) The Constitutional mandate forbids

the Respondent being a state agency from assuming or discharging the duties of the judiciary. Community Supervision was not pronounced by Judge Barber. The Respondent is forbidden to encroach on the Judiciary by the enforcing of community supervision to the Appellants sentence. ("Although subject to statutory and constitutional restriction, the imposition of sentences is a judicial function.") ("Exercise of this function by the hearing officer, a member of the executive branch of the government, violated the doctrine of separation of powers") See: State v. Archie, 322 S.C. 135, 470 S.E.2d 380. It is obvious by the Sentencing Transcript, Judge Barber did not orally sentence or pronounce that the Appellant be sentence to Community Supervision. The Respondent also violated the Due Process Clause of the U.S. Constitution Fourteenth Amendment, by the enforcement of Community Supervision. ("The choice of pains and penalties when choice is committed to the discretion of the court, is part of the judicial function. This being so, it must have expression in the sentence, and the sentence is the judgment") Please See Hill v. U.S. ex rel Wampler, 298 U.S. 410 56 S.Ct. 760.

"(Thus the teaching of Hill is that the oral sentence pronounced by the sentencing Judge constitutes the Judgment, and anything inconsistent with the Judgment, which is included in a commitment order is a nullity") See Johnson v. Mabry, 602 F.2d 167, 170 (8th Cir.) Judge Barber oral sentence pronouncement was (35) thirty five years imprisonment. The Respondent enforcement of a unpronounced penalty violates the Rule of law. ("A sentence cannot contain elements that were not part of a Judge's pronouncement. when a Judge fails to impose a custodial element of a sentence, that element is not part of the sentence regardless of whether that failure was due to oversight or to customary practice"), ("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."), Earley v. Murray II, 462 F.3d 147 (2nd Cir. 2006). The Respondent violation of the S.C. and U.S. Constitutions is apparent.

The enforcement of an unpronounced penalty is forbidden. The Due Process clause commands that the penalty of a sentence is a judicial function.

CONCLUSION

The Appellant respectfully request that this Court will reverse and remand the decision of the Administrative law Court and order that the Respondent excise the unpronounced penalty of Community Supervision from his sentence.

Date September 18, 2023

Respectfully Submitted,
Ronald Coe
APPELLANT

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PROOF OF SERVICE

I Ronald Ceo, # 258464, certify that I have served the Initial Brief and Designation of Matter to be Included In The Record on Appeal by depositing a copy in the MacDougall Correctional Institution mailroom on September 18, 2023 service was made by Inter-Departmental mail and addressed as followed.

September 18, 2023

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