

THE SOUTH CAROLINA COURT OF APPEALS

---

Dazzelle Smith, # 330312, Appellant,

V.

South Carolina Department of Corrections, Respondent

Appellate Case No. 2013-000088

The Honorable John D. McLead

Trial Court Case No. 2011 ALJ040895AP

---

Appellant's Initial Brief And Designation of Matter

---

For The Court

Dazzelle Smith #330312  
Ridgeland Correctional Institution  
5 Correctional Road  
Ridgeland, S.C. 29936

By Dazzelle Smith  
Dazzelle Smith, #330312  
Appellant, Pro-Se

**RECEIVED**

AUG 05 2013

**SC Court of Appeals**

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of Case.....	2
Argument And Citation of Authority.....	3
Conclusion.....	4
Certificate of Service.....	5

TABLE OF AUTHORITIES

I. Statues:

- . S.C. Code Ann. § 44-53-370
- . S.C. Code Ann § 24-13-125
- . S.C. Code Ann § 24-13-220
- . S.C. Code Ann § 24-21-610
- . S.C. Code Ann § 44-53-375

II. Cases:

- . Early, 451 F.3d 71,76 (2d Cir. 2006).
- . Hill V. Wampler, 298 U.S. (1936).
- . State of South Carolina V. K.C. Langford, III.
- . U.S. V. Marquez, 506 F.2d 620, 622 (2d Cir. 1974).
- . State V. Dupree 354 S.C. 676 (2003).

III Constitution:

S.C Const. Art. 1, §8.

STATEMENT OF ISSUES

I. Is respondent's final agency decision supported by substantial evidence?

(2) STATEMENT OF CASE CASE #000088

This matter comes before this Honorable Court pursuant to the appeal of Dazzelle Smith (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (S.C.D.C.). Appellant is currently committed to S.C.D.C. with a three year and six month sentence for possession with intent to distribute Crack Cocaine (2nd offense).

~~-STATUTES-~~

Pursuant to 44-53-370, 44-53-375 (B)(2) it clearly states: For a second offense, or if in the case of a first conviction of violation of the laws of the United States or of any State, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars or both. (44-53-370)

Further more it also states: notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.... 44-53-370/44-53-375 (B)(2).

However South Carolina Department of Corrections states that pursuant to 24-13-150(A) (Supp. 2011) this requirement was a result of the statute, not an SCDC policy-accordingly, S.C.D.C. is correct in calculating appellants sentence to require 85% of his sentence to be fulfilled before he is eligible for release.

S.C.D.C continue to state that S.C.D.C.'s classification policy states that if any inmate has had at lease one violent conviction, the S.C.D.C. classification will indicate violent.

S.C.D.C. quote statute 24-13-150(A) which basically states that...A prisoner convicted of a "no parole offense" as defined in section 24-13-100 and sentenced to the department of corrections.... until the prisoner has served at lease 85% of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits not including any portion of the sentence which has been suspended... (24-13-150).

However contrary to the statute and S.C.D.C. argument I had my first parole hearing in 2012 and my subsequent parole hearing was in June 2013, therefore appellant argument that he should not have been classified as a violent offender still stand.

In addition 24-13-125 states not with standing any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed.

A prisoner convicted of a "no parole offense", as defined in sect. 24-13-100 and sentenced to the custody of the Department of Corr. including a prisoner serving time in a local facility pursuant to a designated facility pursuant to a designated facility agreement authorized by sec. 24-3-20 is not eligible for work release until the prisoner has served not less than eighty five percent of the actual term of imprisonment imposed; however if records is viewed carefully the courts will see that I do not fall under 24-13-125, 24-13-100 or 24-3-20. Appellant should be sentenced by statutes of law not by policy as S.C.D.C. is doing. Law supercede policy. Be mindful I had parole hearings twice since my conviction.

Further more in support of my argument I would quote statute 24-13-220 in regards to good behavior in cases of commuted or suspended sentence that I am in titled to by law not by S.C.D.C. policy, and it reads as follows: The provisions of sec. 24-13-210 shall also apply when a portion of a sentence which has been imposed is suspended. Credits earned for good conduct shall be deducted from and computed on the time the person is actually required to serve, and the suspended sentence shall begin on the date of his release from servitude as herein provided - take note that the statute reads shall.

Also pertaining to parole 24-21-610 it states in favor to appellants argument that in computing parole eligibility, no deduction of time may be allowed in any case for good behavior, but after June 30, 1981, there must be deductions of time in All Cases for earned work credits, not with standing the provisions of 16-3-20, 16-11-330 and 24-13-230. therefore I am entitled to work credits pursuant to this statute. As mention previously I had parole hearings 2 in number since my conviction in 2011.

#### -CASE LAWS-

Furthermore pursuant to Earley V. Murray, 451-F.3d 71 (U.S. App 2006) counsel failed to advise his client of the fact that the Dept. of South Carolina Correction could act administratively to enhance his imposed term, and counsel failed to advise his client of the mandatory community supervised probation he would receive as a direct result of the Department of Corrections enhancement. This omissions were prejudicial, inso much it offers support to his claim of ineffective assistance of counsel in regards to his guilty plea being rendered not knowingly and unintelligently as it relates to the understanding of the facts surrounding this plea, that has been previously alleged coerced by counsel. Also see Hill V. Wampler 298 U.S. 460 (1936).

A oral sentence constitutes the judgement of commitment by the Court, and that it is that sentence that provides the authority for the execution of the sentence. This is factual pursuant to United States V. Marquez, 506 F.2d 620, 622 (2d. Cir. 1974). for further support for this factual statement that is supported by above Case Law the South Carolina Constitution states ".....our constitution mandates that 'the legislative, executive, and judicial powers of the government shall be forever seperate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.'" S.C Court Art 1, §8. and one

of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws, The executive department carries the laws into effect; and the judicial department interprets and declares the laws. See. State V. EX Rel. McLeod V. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). What part do S.C.D.C. fit into? As stated by S.C.D.C. "...The SCDC classification will indicate violent if an inmate has had at least one violent conviction." See page (5) lines 7-10. Policy do not supercede statute or law.

To proceed to Hill v. Wampler, 298 U.S. 460 (1936). The judgement of the Court establishes a defendants sentence, and the sentence may not be increased by an administrator's amendment. Therefore Hill V. Wampler and S.C. Const. 1§8 establishes without a doubt the applicant's claim.

Applicant argues his counsel should have made him aware of these facts, and understandings of relevant points of the law.

By law and S.C. Const. the duty of imposing a penalty/punishment because of a violation of the law is the sole duty of judicial based off of what was established by legislature S.C.D.C. is to classify inmates accordingly and not by policy, punishment is determined by law.

Justice Cardoza arrived at a judgement governed by law that "The only sentence known to the law is the sentence or judgement entered upon the records of the Court, until corrected in a direct proceeding, it says what is was meant to say, and this by an irrebuttable presumption. "See Earley V. Murray, Supra.

Therefore any addition or alteration to appellant's sentence outside of judicial functions is clearly unlawful. S.C.D.C has no authority supported by law to enhance sentencing. By law it is clearly the function of the Courts to determine whether sentencing warrants enhancement justified by law.

Finally, pursuant to State V. Lancaster which quotes the South Carolina Constitution stating once again that all government departments shall forever remain separate and distinct as quoted: "our Constitution mandates that " 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 functions of one of said departments shall assume or discharge the duties of any other. " S.C. Const. Art. 1§8.

Therefore based doff of the above reference appellant strongly believe that a prejudice have occurred and the prejudice should be rectified to its fullest.

The time has now arrive for us, convicted felons to acknowledge that 14.14 SCDC classification is at odds with this intrinsically judicial power, therefore the Courts should logically hold that O.P. 14.14 SCDC violates the separation of powers and therefore is unconstitutional.

With all due respect allow the record reflect that I have not previously mentioned, due to the lack of legal education and experience that I do not have an attorney representing me, I am representing myself as a Pro Se Appellant. If this brief is not in its correct form it is due to the reason and facts above.

#### CONCLUSION

Wherefore, for all the reasons stated above, this Court should reverse The Department of Corrections decision in this case.

THE SOUTH CAROLINA COURT OF APPEALS

Dazzelle Smith #330312

Case #2013-000088

v.

South Carolina Department of Corrections

Certificate of Service

CERTIFICATE OF SERVICE BY MAIL

I Dazzelle, Smith, hereby certify that I have this date served a copy of The Appellant's Initial Brief and Designation of Matter depositing a copy in The United States Mail, postage prepaid, addressed to The South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211.

s/ Dazzelle Smith  
Dazzelle, Smith #330312

**RECEIVED**

AUG 05 2013

**SC Court of Appeals**