

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge, John D. McLeod

CASE NO. 13-ALJ-04-0665-AP

S.C. Dept. of Corrections..... Respondent,

v.

Stefen E. Harris # 208563 Appellant.

INITIAL BRIEF OF APPELLANT

January 16, 2014

Appellant

Stefen E. Harris # 208563
Ker. Co. I. 1PB-33
4848 Goldmine Hwy
Kershaw, S.C. 29067

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

- I. DUE PROCESS REQUIRES THE JUDGE'S ORAL PRONOUNCEMENT CONTROLS OVER A CONFLICTING WRITTEN SENTENCING ORDER

- II. S.C.D.C. DOES NOT HAVE THE POWER TO ALTER THE SENTENCE IMPOSED BY THE COURT ADDED CONDITION SHOULD BE VOIDED

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Stefan E. Harris #20853 ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("S.C.D.C.").

Appellant is appealing the unilateral modification of sentence with an additional penalty being added by changing Appellant's sentence, which changed Appellant's max-out date from April 10, 2013 to November 1, 2020. On June 3, 2010 by S.C.D.C. when Appellant's sentence was recalculated. (R.P. —)

Appellant filed Step One Grievance on January 15, 2013. This grievance was investigated and denied February 7, 2013. Then Appellant filed Step Two Grievance on February 7, 2013. This grievance was investigated and denied August 13, 2013. (R.P. —)

After the Appellant filed Appellant Brief on or about November 8, 2013, the A.L.C. affirmed S.C.D.C.'s final decision finding that the Department's calculation of Appellant's sentence is affirmed. The A.L.C. rejected Appellant's arguments for failing to produce any record to the contrary. (R.P. —)

Appellant now seeks review of the A.L.C.'s decision, for the reasons that follow, Appellant respectfully requests that the A.L.C.'s and the Dept. of Corrections decision be corrected, to reflect the sentence that was imposed by the Judge, in open Court.

STANDARD OF REVIEW

A hearing is required by law when an Inmate faces the potential loss of sentence-related credits. S.C. Const. Art. 1 § 22, S.C. Code of Law Ann. § 24-13-210, § 24-13-230

Appellant never went before an S.C.D.C. Inmate Classification Committee for the drastic change to Appellant's sentence, without explanation as to why. "Some kind of hearing is required at some time before a person is finally deprived of his Liberty, even when

the liberty itself is a statutory creation of the state," U.S.C.A. Const. Amend. 14

The Statutory right to a correctly calculated sentence is a protected "Liberty" interest under the Fourteenth Amendment entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539, 24 S.Ct 2963 (1974)

Appellant having been sentenced in open Court by the Judge. With there not being a mandatory component pronounced. Thus making the sentence announced in Court binding. Only the Court has the authority to re-sentence. S.C.D.C.'s unilateral modification to appellant's sentence is not in accordance with clearly established Law. S.C. code of Law Ann. 56-1-410

The U.S. Supreme Court has established that the sentence imposed by the sentencing Judge is controlling it is the sentence that constitutes the Court's Judgment and authorizes the custody of a defendant. Hill v. United States, ex rel Wampler, 298 U.S. 460, 56 S. Ct 760 80 L. Ed 1238 (1936)

Demonstrating that S.C.D.C. is incorrectly calculating and misinterpreting Appellant's sentence. Appellant moves to show that S.C.D.C. is failing to or neglecting the obligation of calculation of the accurate sentence that was imposed by the Judge in open Court.

That creates a significant risk against post offense changes and increased punishment. which is mandated by the U.S. constitution EX POST FACTO CLAUSE. Also S.C. Jurisprudence and S.C. code of Law Ann. § 24-13-40

ARGUMENT AND CITATION OF AUTHORITY

I. DUE PROCESS REQUIRES THE JUDGE'S ORAL PRONOUNCEMENT CONTROLS OVER A CONFLICTING WRITTEN SENTENCING ORDER.

An oral pronouncement of a sentence controls over a conflicting sentencing order, the majority of jurisdictions that have considered this point hold

the oral pronouncement controls. SEE eg U.S. v. Osborne, 345 F.3d 281 (4th cir. 2003)

The trial Judge announced one sentence from the bench in the presence of the defendant, but was later increased by S.C.D.C. unilaterally. 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.

Kennedy v. Reid, 249 F.2d 492

Examination of the transcript of record to determine the intent of the sentencing judge. See Major v. S.C. Dept. of Prob. Parole and Pardon Service, 384 S.C. 457, 471, 682 S.E.2d 795, 809 (2009)

In tant v. S.C. Dept. of Corrections, 718 S.E. 2d 753 Found that an oral sentencing pronouncement prevails over written sentencing sheets. Appellant was not informed of this mandatory minimum term provision, at the time, sentence was imposed. Holding that the written judgment of commitment is simply evidence of the oral sentence. United States v. Marquez, 506 F.2d 620, 622.

Since there is ambiguity in the sentence, must the Dept. or the Court ascertain the intent of the Judge.

II. S.C.D.C. DOES NOT HAVE THE POWER TO ALTER THE SENTENCE IMPOSED BY THE COURT ADDED CONDITION SHOULD BE VOIDED

Appellant's sentence has not been correctly interpreted, since S.C.D.C. does not have the power to alter a sentence imposed by the Court.

When it was determined that there is an error in the sentence, the Law provides the appropriate remedy. If an inmate has received an illegal sentence, the state may move to have the offending sentence vacated and the defendant resented by a Judge.

Bozza v. United States, 67 S.Ct 645

there is a procedure that is required by Law before S.C.D.C. could unilaterally modify the sentence imposed by the Court. At any time not

more than one year after the entry of a Judgment, the Court in which it was entered may, upon motion of the people, set aside the sentence upon the grounds that it was invalid as a matter of Law. S.C.R.C.P. Rule 29

On June 3, 2010 was when S.C.D.C. "RECALCULATED" appellant's sentence changing his Max-out date (R.P. -) clearly over the one year limit on the time to make a motion for a new trial based on after-discovered evidence. S.C. code of Law Ann. § 56-1-410

From S.C.D.C.'s own Offender Management System Commitment Application, Conviction Summary; upon entry into the system when first arriving in S.C.D.C. the O.M.S. projected Appellant's max-out date as April 10, 2013 (R.P. -) - before the calculation of good time and work credit - "Though rights of prisoners may be diminished by needs and exigencies of the institutional environment, he is not wholly without protection of the Constitution and due process clause" U.S.C.A. Const. Amends. 1, 14.

CONCLUSION

WHEREFORE, For all the reasons stated above, this court should reverse the decision of the A.C.C. and the Dept. of Corrections and have this sentence calculated correctly to reflect the true intent of the sentence that was imposed by the Judge, in open court.

Respectfully submitted,

APPELLANT

Stefen E. Harris

Stefen E. Harris #208563

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Kershaw, S.C. 29067

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Administrative Law Judge, John D. McLeod

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S.C. Dept. of Corrections, Respondent

v.

Stefen E. Harris #208523 Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Initial Brief of Appellant by depositing a copy of the same in the United States Mail, postage prepaid, on January 16, 2014, addressed to the following:

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