

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge, John D. McLeod

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

S.C. Dept. of Corrections Respondent,

v.

Stefen E. Harris #208563 Appellant.

REPLY BRIEF

March 5, 2014

APPELLANT

Stefen E. Harris #208563
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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. IS DUE PROCESS REQUIRED, BEFORE THE DEPARTMENT OF CORRECTIONS, CAN CHANGE A SENTENCE, BASED ON A RECALCULATION OF THAT SENTENCE; AFTER SEVERAL YEARS OF COMMENCEMENT OF SERVICE; DOES THIS CONSTITUTE DOUBLE JEOPARDY?

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Stefan E. Harris ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC").

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 August 1, 2012 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. (R.P. -) Appellant filed a 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 November 11, 2013, the A.L.C. affirmed S.C.D.C. final decision finding that the Department's calculation of appellant's sentence, December 10, 2013 is affirmed. The A.L.C. rejected Appellant's arguments for failing to produce any record to the contrary.

The Appellant now Replies claiming his sentence does not require a mandatory minimum term. By reason, of one not being announced in Court by the Judge (R.P. -)

For these additional reasons that follow appellant respectfully request that this sentence be corrected, to reflect the sentence that was imposed by the court.

STANDARD OF REVIEW

It deals with a single issue: The meaning of statute versus an oral pronouncement.

With the citation of the statute as the grounds for which the Department of Corrections is using for, the upholding of the sentence that is to be served. Where then does the oral pronouncement preside.

When there is a clear discrepancy with the sentencing sheet and the sentence that was pronounced in court by the Judge. (R.P. —)

There should be a review to clarify, which has the power to detain. Since, S.C.D.C. is basing its interpretation of the statute, to continue the service of the sentence. While the appellant contends that the sentence orally pronounced from the bench in open court is controlling. With there being precedence to match.

And it should be the sentence that appellant is required to serve. Subsequently, in that S.C.D.C. unilaterally modified the appellant's sentence without ever having been before any kind of committee, review board and the like; to explain how this sudden change in appelles max out date occurred.

With so much time having passed, having went before the Inmate Classification Committee several times thru out the course of serving out the sentence that appellant was suppose to prior to -June 3, 2010- there was no mention of the need to "RECALCULATE" appellant's sentence at those times.

These types of actions are not supported by any state or Federal Law, that would give the power to a state agency, to increase the sentence once imposed by the Court

ARGUMENT AND CITATION OF AUTHORITY

I. IS DUE PROCESS REQUIRED, BEFORE THE DEPARTMENT OF CORRECTIONS, CAN CHANGE A SENTENCE, BASED ON A RECALCULATION OF THAT SENTENCE; AFTER SEVERAL YEARS OF COMMENCEMENT OF SERVICE; DOES THIS CONSTITUTE DOUBLE JEOPARDY?

The contention that appellant is making is that only the Judge has "the authority to change a sentence, [it] rests solely and exclusively within the discretion of, the sentencing Judge." State v. Smith, 280 S2d 200. There still should be a standard of review and reliance on the fact; that the judge did not announce from the bench during sentencing

that this sentence is to be served under a mandatory provision.

Review of the sentencing phase, would show that the Court did not stipulate that appellant's sentence required a mandatory minimum term, "contending that the Double Jeopardy Clause precludes enhancement of appellant's sentence."

Showing "that the Judge's oral pronouncements, on the record, constituted sufficient finding of fact..." Christy v. Christy, 556 SE2d 701. There is also "the seminal authority for the proposition that the Double Jeopardy Clause bars enhancement of sentence after commencement of service."

It is an essential component of due process that individuals be given fair warning of those acts which may lead to a loss of liberty; this is no less true whether the loss of liberty arises from a criminal conviction or revocation of probation. State v. Allen, 634 SE2d 653

"[T]he power of a sentencing Court to correct even a statutorily invalid sentence must be subject to some temporal limit. When a prisoner first commences to serve his sentence, especially if it involves a long prison term as here, the prospect of release on parole or otherwise may seem but a dimly perceived, largely unreal hope.

As the months and years pass, however, the date of that prospect must assume a real and psychologically critical importance. The prisoner may be aided in enduring his confinement and coping with the prison regime by the knowledge that with good behavior release on parole or release outright will be achieved on a certain date.

After a substantial period of time, therefore, it might be fundamentally unfair, and thus violative of due process for a court to alter even an illegal sentence in a way which frustrates a prisoners' expectations by postponing his parole eligibility or release date far beyond that originally set.

More important to the instant case, due process may also be denied when a sentence is enhanced after the defendant has served so much of his

expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them"

Breest v. Helge more, 579 F.2d 95

"It is not necessary in this case to insist that other cases beside those involving life or limb are positively covered by the language of this amendment; or that when a party has had a fair trial before a competent court and jury, and has been convicted that any excess of punishment deprives him of liberty or property without due course of law."

"It seems more likely that any constitutional source of protection of the defendant's interest in the finality of his sentence must be found in the Fifth Amendment's guarantee of due process."

"The Federal Court has held that the "Court cannot change sentence after beginning of service thereof..."

Cisson v. U.S., 37 F2d 330 See also U.S. v Lundien, 769 F.2d 981. How then is it possible that S.C.D.C. could change appellant's sentence after commencement?

"The conclusion followed that the substitution of a greater sentence violated the Double Jeopardy Clause as multiple punishment for the same offense." SEE U.S. v. Jefferson, 714 F2d 689

CONCLUSION

In consideration of the above reasons stated this Court should reverse the decision of the A.C.C. and the Department 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

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Kershaw, S.C. 29067

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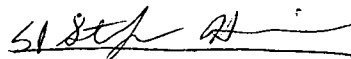
CERTIFICATE OF SERVICE

I hereby certify that I have served all parties listed below a copy of the Reply Brief of Appellant by depositing a copy of the same in the United States Mail, postage prepaid. On March 5, 2014, addressed to the following:

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