

SOUTH CAROLINA COURT OF APPEALS

David Buff

APPELLANT

vs.

South Carolina Department of Corrections

RESPONDANT

APPELLATE CASE No: 2014-000045

APPELLANT'S INITIAL BRIEF

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SC Court of Appeals

STATEMENT OF FACTS

Appellant, David Keith Buff ("Buff"), became aware that Respondant, South Carolina Department of Corrections ("SCDC") was forcing him to serve ninety (90) percent of his ten (10) year sentence when by statute he is only required to serve eighty-five (85) percent, so long as he does not violate prison disciplinary rules or refuse to work. It is undisputed that Buff has not committed acts of overt misbehavior nor has he refused to work. Buff exhausted his administrative remedies with SCDC and sought further appeal with the Administrative Law Court ("ALC") who dismissed Buff's appeal. This appeal followed.

ARGUMENTS

A. IS IT CONSTITUTIONAL TO FORCE AN INMATE SERVING A TEN (10) YEAR SENTENCE AT EIGHTY-FIVE (85) PERCENT, TO ACTUALLY SERVE NINETY (90) PERCENT OF THAT SENTENCE INSTEAD, EVEN WHEN THAT INMATE HAS NOT VIOLATED PRISON DISCIPLINARY RULES ?

1. SCDC has erroneously calculated Buff's statutory good-time credits, to the extent that SCDC has taken six (6) months of good-time from Buff for no justifiable reason, especially when Buff has not lost any good-time, or broken prison disciplinary rules resulting in such loss, nor has he committed any acts of overt misbehavior. WOLFE-V- McDONNELL, 418 U.S. 539 (1974) (... liberty interest in avoiding withdrawal of state-created system of good-time credits). Buff is serving a ten (10) year sentence for a violent crime at a statutory eighty-five (85) percent, and he is required to serve only eight (8) and a half years of that ten (10) year sentence, so long as he does not violate prison disciplinary rules. Here though, Buff is forced by SCDC to serve ninety (90) percent of that ten (10) year sentence, which is six (6) months longer than the statutory requirement, even though he has not lost that six (6) months in any disciplinary hearing. VITEK-V- JONES, 445 U.S. 480 (1980) (... constitute a change in conditions of confinement that amounts to a grievous loss). Six (6) months of good-time withdrawal is undoubtedly a grievous loss for an inmate that commits no acts of overt misbehavior. SEE SWEET-V- SCDC, 529 F.2d 854 (1975). Also, Buff was not afforded any due process protections before six (6) months of statutory good-time credit was taken from him. WOLFE, 418 U.S. 539 (1974); SEE ALSO REEVES-V- PETTICOX, 19 F.3d 1060 (5th Cir. 1994) (... inmate is entitled to prior notice or "fair warning" of proscribed conduct before a severe sanction may be imposed) (CITING ADAMS-V- GUNNELL, 729 F.2d 362, 369-70 (5th Cir. 1984)).

CONCLUSION

Based on the foregoing the ALL's dismissal of Buff's appeal should be reversed and remanded, and Buff's relief, which is to have his sentence calculated to the proper statutory requirements of good-time credit of eighty-five (85) percent for inmates who have not broken any prison disciplinary rules, be granted.

RESPECTFULLY SUBMITTED



David Keith Buff # 311020
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APRIL 7TH, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to the parties last known address as follows :

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DAVID KEITH BLUFF

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THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM. THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

LIEBER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

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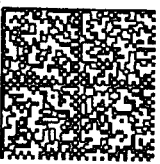
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