

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from S.C. Administrative
Law Court,
Hon. Deborah Brooks Durden, Presiding

Docket:13-ALJ-04-07
Grievance No.BRCI-0848-12

Perry Watford -- Appellant,

-Vs-

RECEIVED

MAY 23 2014

SC Court of Appeals

South Carolina Department of Corrections -- Appellee,

APPELLANT'S INITIAL BRIEF ON APPEAL

Perry Watford
SCDC# 289215
PCI (2A-115)
Pelzer, SC. 29669

Appellant, pro-se

TABLE OF CONTENTS

TABLE OF CONTENTS,.....i
TABLE OF AUTHORITES,.....ii
QUESTION PRESENTED,iii
STATEMENT OF THE CASE,.....iv
ARGUMENT,1
CONCLUSION,.....6

RECORD ON APPEAL (ROA)

Inmate to Staff Request-1
Step 1 grievance-2 - 2
Step 2 grievance - 3
ALJ ORDER - 4

TABLE OF AUTHORITIES

Beazall v. Ohio, 269 U.S. 167 (1925),.....5
Berverati v. Smith, 120 F.3d 500 (4th Cir.1997),.....4
Bd. of Regents v. Roth, 408 U.S. 546 (1972),.....4
Collins v. Youngblood, 497 U.S. 37 (1990),.....5
Jernigan v. State, 531 S.E.2d 507 (2007),.....4
Morrissett v. Brewer, 408 U.S. 471 (1971),.....4
Sandin v. Conner, 515 U.S. 472 (1995),.....5
Sanders v. SCDC, 665 S.E.2d 231 (Ct.App.208),.....4
Wilkinson v. Austin, 545 U.S. 209 (2005),.....5

Ex Post Facto Clause,.....Addendum

QUESTION PRESENTED

THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO FIND SCDC CLASSIFYING APPELLANT AS A VIOLENT OFFENDER RESULTS IN A EX POST FACTO VIOLATION SINCE APPELLANT'S CRIME BY STATE STATUTE IS NON-VIOLENT [65%] AND SCDC CLASSIFYING APPELLANT AS A VIOLENT OFFENDER [85%] REQUIRES APPELLANT TO SERVE [15%] MORE TIME.

STATEMENT OF THE CASE

Appellant is presently incarcerated in the South Carolina Department of Corrections ("SCDC") serving a twenty-five (25) year aggregate sentence for one count of reckless homicide [S.C. Code Ann §56-5-2910](2002-GS-32-2321)(10-years); and one count of leaving the scene of an accident [S.C.Code Ann.§56-5-1210(A)(3)(2002-GS-32-2322)(25-years), sentences were ordered concurrent.

Upon arriving in SCDC Appellant realized SCDC was classifying him as a violent offender rather than a non-violent offender and therefore Appellant is being required to serve more time.

Appellant filed an Step 1 and Step 2 grievance, both of which were ultimately denied. Appellant subsequently sought relief in the Administrative Law Court claiming SCDC classifying Appellant as a violent [85%] offender required Appellant to serve [15%] more time than the [65%] as required to serve by State statute as a non-violent offender. On March 11, 2014 the Administrative Law Court issued an order denying relief. Appellant sought a motion for reconsideration since the ALJ's Order did not address Appellant's ex post facto claim. The ALJ issued an order denying to reconsider. Appellant filed a timely Notice of Appeal with this Court. This appeal is as follows:

ARGUMENT

THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO FIND SCDC CLASSIFYING APPELLANT AS A VIOLENT OFFENDER RESULTS IN A EX POST FACTO VIOLATION SINCE APPELLANT'S CRIME BY STATE STATUTE IS NON-VIOLENT [65%] AND SCDC CLASSIFYING APPELLANT AS A VIOLENT OFFENDER [85%] REQUIRES APPELLANT TO SERVE [15%] MORE TIME.

Appellant was initially arrested in Lexington County South Carolina on [October 11, 2001] and was subsequently indicted as stated supra. On [December 3, 2002] Appellant appeared before the Honorable Marc Westbrook and entered pleas of guilty as indicted.

Judge Westbrook sentenced Appellant to a ten (10) year and a twenty-five (25) year sentence, sentences were ordered concurrent.

On [December 4, 2002], Appellant was transported to the South Carolina Department of Corrections to begin commencement of said sentences. After arriving in SCDC it was brought to Appellant's attention that SCDC's classification system was classifying Appellant and his crime(s) as [VIOLENT] offenses and therefore Appellant is being required to serve [25-years at 85%] rather than the original [NON-VIOLENT 65%] as required by State statute (emphasis original).

On March 15, 2011, Appellant wrote an Inmate-to-Staff request [SCDC-Form 19-11] to Head of Classification at SCDC Headquarters, ROA, p.1. Branch Chief Michael Mather responded March 18, 2011 informing Appellant:

"hit and run -- death results in a non-violent offense by state statute. It's SCDC's classification is consider violent because the statute "has been changed to a violent offense. "At the time you committed your offense it was non-violent,

ROA, p.1

As was seen it is SCDC that is classifying Appellant's crimes "as violent", even though by law the crimes were "non-violent" by State statute. It should be noted that Appellant's crimes were non-violent at the time they were committed, it was only [after] the State statute was changed, (emphasis supplied).

Appellant immediately filed a Step 1 grievance concerning the matter, ROA, p.2. SCDC's response was:

While your crime might have been classified as non-violent at the time it was committed, by the time you came under the custody of SCDC the statutes had changed. Unless the law changes you will remain classified as a violent offender. ROA at 2.

As is seen SCDC candidly admits that Appellant's crimes were classified by state statute [as] "non-violent at the time they were committed, but [by the time] you entered SCDC's custody the state statute had "changed", ROA p.2.

Appellant filed a Step 2 grievance disagreeing with the SCDC's findings, as such SCDC's classification is penalizing Appellant by requiring him to serve 15% more time in prison.

SCDC's response to his Step 2 was:

Offenses are statutorily violent [if] they were violent under S.C.Code §16-1-60 at the time of conviction. In contrast, offenses are considered for classification purposes if they are listed in §16-1-60, regardless of the date of your conviction. Therefore, your offense is statutorily non-violent, but you are classified as violent.
ROA, at 2.

As is seen above SCDC determines classification violent vs. non-violent. It is readily apparent that [at] the time of Appellant's conviction his crime was "non-violent".

SCDC further found that:

This classification has no bearing on your projected release date or sentence credits. You are required to served a mandatory minimum 85% of your 25 year sentence based on your offense, not you violent status for classification purposes.

ROA, p.2

SCDC has confusingly contradicted themselves. It is easily seen that SCDC has first said Appellant's offense was originally a [non-violent] offense by state statute, which is a 65% percent offense. Then as is seen above in the underlined portions SCDC states Appellant "is required to serve 85% percent based on his offense,

Appellant would submit SCDC's classification of Appellant's [NON-VIOLENT] offenses, by state statutes violates the Ex Post Facto Clause. SCDC clearly admits that [at] the time Appellant committed the Offenses, they were, by State Statute non-violent, (emphasis supplied), and that it is SCDC's classification system that is classifying Appellant as "violent" even though at the time of his offenses they were considered "NON-VIOLENT", ROA at 1, this meaning that as "a non-violent offense" according to South Carolina Code of Laws, Appellant would only be required to serve a 65% percent sentence of his (25-year non-violent offense), but due to SCDC's interpretation of the [changed] law, SCDC's classification system is being applied to Appellant in a manner that "increases" his punishment, thus imposing a harsher sentence by 15% more than his original sentence required him to serve. Under a [non-violent offense] an offender is only required to serve 65% percent, but as is seen SCDC's classification system and SCDC's

application of the "changed" law to Appellant, Appellant is being forced to served an 85% percent sentence, ROA at 3.

Appellant would submit SCDC does not have the authority to re-open Appellant's non-violent offense and make them "violent" for classification purposes, especially since the offenses were non-violent at the time they were committed and the "law changed" after Appellant came under SCDC's cusody. SCDC's increasing Appellant's sentence violates the ex post facto clause. An ex post violation occurs when a "change in law retroactively alters the definition of a crime or increases the punishment for a crime, See *Jernigan v. State*, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000), ex post facto claims are non-collateral matters, *Id.*, at 260, 531 S.E.2d at 509, and this Court has found the ALJ has jurisdiction to hear these types of issues, *Sanders v. SCDC*, 379 S.C. 411 665 S.E.2d 231 (Ct.App.2008).

IN the instant matter the ALJ did not address Appellant's ex post facto violation, rather the ALJ simply adopted SCDC's "no liberty interest" argument, ROA at 4. Appellant would submit the Due Process Clause applies when government action deprives an individual of a legitimate liberty or property interest, See *Bd. of Regents of State Colls v. Roth*, 408 U.S. 564, 569-70 (1972).

The first step in analyzing a procedural Due Process claim is to identify whether the alleged conduct affects a protected liberty or property interest, *Beverati v. Smith*, 120 F.3d 500, 502 (4 Cir.1997)(citing cases). Where government action impacts a protected liberty interest, the second step is to determine "what process is due" under the circumstances, *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)(observing that due process is flexible... and

not all situations calling for procedural safeguards call for the same kind of process).

A liberty interest may arise from the Constitution itself, or from State laws or policies, *Wilkinson v. Austin*, 545 U.S. 209, 220-221 (2005). In the instant matter Appellant would assert that at the time he entered his plea and was sentenced his offenses were [non-violent] offenses for sentencing purposes. It was only SCDC after the law changed who applied a [violent] classification status to Appellant, thus requiring him to serve 15% more time than originally under his original 65%, non-violent sentence.

To demonstrate the existence of a state-created liberty interest, Appellant must make the threshold showing that the deprivation imposed amounts to a "typical and significant hardship" or that it "inevitably affect(s) the duration of his sentence", See *Sandin v. Conner*, 515 U.S. 472, 484, 487 (1995), see also *Procida*

The United States Constitution prohibits federal and state governments from passing any ex post facto laws, art. I, §10, cl. 1. An ex post facto law is any [statute] which makes more burdensome the punishment for a crime "after" it's commission, *Collins v. Youngblood*, 497 U.S. 37, 42 (1990)(quoting *Beazell v. Ohio*, 269 U.S. 167, 169-70 (1925)).

Throughout the records before this Court it is easily seen that SCDC's enforcement of the "changed law" to Applicant's sentence, violates the ex post facto clause.

CONCLUSION

WHEREFORE, Applicant respectfully submits this Court should remand this case back to SCDC with instructions to apply the law to Applicant as it was at the time of his conviction, thus to consider his sentences [Non-violent] 65% as required by the law as it was at the time they were committed, or fashion any other relief this Court deems just and appropriate.

Respectfully Submitted,

/s/ Perry Watford 289215

Perry Watford

Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from SC.Administrative
Law Court
Hon. Deborah Brooks Durden, Presiding

Docket.13-ALJ-04-0732
Grievance No.BRCI-0848-12

Perry Watford -- Appellant,

-vs-

South Carolina Department of Corrections -- Appellee,

RECEIVED

MAY 23 2014

SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned does hereby certify he has served the Original of the enclosed Appellant's Initial Brief on Appeal and Record on Appeal on the Clerk of the South Carolina Court of Appeals, this was done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S Mail this 19th, day of May, 2014.

NOTE!!!!

Appellant would ask the Clerk to take Notice that SCDC will NOT make legal copies of Appellant's Legal Briefs and therefore Appellant is unable to properly serve Appellee/Respondent, SCDC as a copy of the enclosed as required by the Rules. Appellant therefore in the interest of justice would ask the Clerk to please forward a copy to SCDC P.O.Box 21787, Columbia, SC 29221-1787, and further return a clock stamped copy to Appellant for his records.

I apologize for any inconvenience, I am in the process of filing a preliminary injunction for immediate injunctive relief regarding SCDC's denial of access to the Courts but for today's purposes and deadline this is my only available avenue. Thank You

Respectfully,

/s/ Perry Watford 209215
Perry Watford

This 19th day of May 2014

Jamarc Conwell

My Commission Expires
September 25, 2023

Ferry Wafford # 289215
P.C.I. Q2-A115
430 Oaklawn Rd.
Pelzer, S.C. 29669

RECEIVED
MAY 19 2014
P.C.I. MAILROOM

RECEIVED
MAY 23 2014
SC COURT OF APPEALS

South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

THE DEPARTMENT OF CORRECTIONS HAS
NOT CENSORED THIS ITEM, THEREFORE,
THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
S. C. DEPARTMENT OF CORRECTIONS