

IN THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

CASE NO. 13-ALJ-04-0417-AP

DAVID BLUFF #311020..... APPELLANT,

VS.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS..... RESPONDANT.

APPELLANTS RESPONSE TO RESPONDANTS
INITIAL BRIEF

DAVID KEITH BLUFF #311020
LIEBER CORR. INST. SMLI/MB-241
POST OFFICE BOX 205
RIDGEMOUNT S.C. 29472

OFFICE OF GENERAL COUNSEL
SOUTH CAROLINA DEPARTMENT OF
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P.O. BOX 21787
COLUMBIA S.C. 29221-1787

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SC Court of Appeals

STATEMENT OF THE CASE

1. This matter comes before the South Carolina Court of Appeals pursuant to the appeal of David Buff ("Buff") an inmate with the South Carolina Department of Corrections ("SCDC") serving a ten year sentence for Lynching 1st Degree, a violent crime and must serve eighty-five percent of that sentence. Buff is confined to the Lieber Correctional Institute ("LIEBER") and housed in that institutions Special Management Unit ("SMU") for non-disciplinary reasons.

2. Buff became aware that SCDC was wrongfully calculating his time and sentence, and filed a Step-1 Grievance on 2-18-11. In that Step-1 Grievance Buff stated:

"I believe that SCDC has wrongfully calculated my time and sentence. I was arrested and detained by SLED on October 6 2006 for my involvement in a Lynching 1st Degree. I was only given a total of 591 days with a start date of 6-1-07, when it should have started 10-6-06. I have been denied this time credit by SCDC. My charge was sentenced to run concurrent with any time or charge that I had or was doing as stated by State and Federal Statute giving the time of my arrest and detention and this was not done either."

(SEE STEP-1 GRIEVANCE). This Grievance was investigated and denied by the Warden at Lieber on 5-17-12. Dissatisfied with the Wardens decision, Buff filed a Step-2 Grievance, which stated:

"My dissatisfaction with the wardens decision is two fold: (1) if my 10 yr sentence runs concurrent with the Probation sentence that the time served on that sentence is to run concurrent with the 10 yrs that I received and the record does not reflect this; and (2) If I am serving 10 yrs eighty-five percent with a start date of 6-1-2007 then my max-out date should be 1-1-2016. But the fact remains that I was detained by SLED on or about 10-6-2006 for the crime. I'm incarcerated for now. But my sentence does not reflect this in my max-out date on either level... I therefore appeal the Wardens decision."

(SEE STEP-2 GRIEVANCE). This Grievance was also investigated and denied on 5-3-13. Buff timely filed his notice of appeal with the Administrative Law Court ("ALC") on 5-29-13. The ALC subsequently dismissed Buff's appeal affirming the SCDC's final decision. Buff now seeks review in this Court.

ARGUMENTS

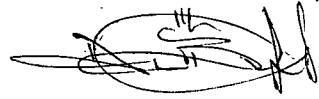
A. IS IT CONSTITUTIONAL TO FORCE AN INMATE SERVING A TEN (10) YEAR SENTENCE AT EIGHTY-FIVE (85) PERCENT TO SERVE NINETY (90) PERCENT OF THAT SENTENCE WHEN HE HAS VIOLATED NO PRISON DISCIPLINARY RULES?

3. Respondent seems to believe that Buff is attempting to argue an issue that was not raised before the lower court. (RESPONDENTS INITIAL BRIEF PAGE 5). A clear examination of the record will show and prove that Buff not only raised this argument in his Grievances, but also raised this argument - along with

several others - not only in the Notice of Appeal, but also in the Brief of Appellant, to the ALC, all relating to the wrongful calculation of his time and sentence. (SEE NOTICE OF APPEAL AND BRIEF OF APPELLANT). More specifically, Buff continuously complained in his grievances that, "SCDC has wrongfully calculated my time and sentence," and not just "time served credits," as Buff clarified in his Step-2 Grievance and subsequent pleadings. Therefore, based on the record as a whole, the argument in Appellants Initial Brief is proper before this Court, as it was before the lower court, contrary to respondents misguided assumption that it is not.

As applied to this issue, and the record as a whole, there is no evidence substantially supporting the lower courts finding, or SCDC's continuous denial of Buff's grievance, and the constitutionally unconstitutional denial of six months good-time credits for non-disciplinary reasons. Based on the foregoing Buff requests an order from this Court remanding this action back to the lower Court in order to develop the record.

Respectfully Submitted,



David Keith Buff # 311020
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Pickensville SC. 29472

JUNE 18TH, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the respondents by depositing a copy of the same in the United States Mail at Lieber Correctional Institute this June 18TH, 2014, addressed to respondents as follows:

OFFICE OF GENERAL COUNSEL
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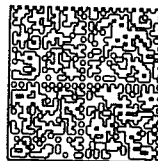
DAVID KEITH BUFF

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