

The State of South Carolina
In The Court of Appeals

RECEIVED

FEB 03 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT TSC Court of Appeals
Deborah Brooks Darden - Administrative Law Judge

Case no-13-ALJ-04-0772 - Appellate Case no-2014-001660

Charles R Carter

Appellant

v

South Carolina Department of Corrections

Respondent

Motion To File out of Time
if needed

Comes now the Appellant Charles R Carter and Requests That This Honorable Court Grant Appellant leave To File His Final Brief and Reply To Respondent's Final Brief out of Time. In support of His Request - Appellant shows unto This Honorable Court The Following:

1. The Prison is Routinely Placed on Disruptive schedule and short of staff which prohibits ~~and~~ normal operations and inmates are locked down - often on the one day that inmates are allowed access to the Law Library.
2. Inmates must present a deadline from the courts to have additional access to the law library.
3. Appellant is scheduled for a Hospital Hernia Surgery in the near future which inmates are not allowed to know when.
4. Appellant's Final Brief and Reply to Respondent's Final Brief is submitted contemporaneously with this motion if this motion is needed.

1-27-2015

Respectfully Submitted
Charles R Carter 246054

The State of South Carolina
In The Court of Appeals

RECEIVED

FEB 09 2015

Appeal From The Administrative Law Court

Deborah Brooks Purden - Administrative Law Judge

Case no - 13-ALS-04-0772-AP - Appellate Case no - 2014-001060

SC Court of Appeals

Charles R Carter 246054

Appellant

South Carolina Department of Corrections

Respondent

Certificate of Service

I certify that I have served a copy of a Motion to File
out of Time, The Final Brief of Appellant and Reply to Respondent's
Final Brief by depositing a copy of it in the US Mail with
proper postage addressed to Daniel J Crooks Esquire at P.O.
Box 21787 COLA SC 29223 and to Jenny Abbott Kitching J
SC Court of Appeals at P.O. Box 11629 COLA SC 29211
on this day of Jan 27 2015.

Charles R Carter 246054
P.O. Box 2039
Ridgeland SC 29936

Daniel J. Crooks III
P.O. Box 21787
COLA SC 29223.

The S.C. Court of Appeals
The Honorable J. Claire Allen
P.O. Box 11629
Columbia SC 29211

RECEIVED

FEB 03 2015

SC Court of Appeals

Dear Ms Allen

Please find enclosed the following

1. Final Brief - proof of service
2. Reply Brief - proof of service
3. Motion to file out of time if needed.

Please return to me a clocked in & stamped copy
of the front page when filed of each.
Thank you very much for your cooperation
and assistance.

Respectfully Submitted
Charles R Carter 246054
P.O. Box 2039
Ridgeland SC 29936

1-27-2015

1-27-2015

I have also mail a copy of the
same to Mr David J Crooks at the
office of General Counsel

LEGAL MAIL

The State of South Carolina

RECEIVED

In The Court of Appeals

FEB 03 2015

SC Court of Appeals

Appeal From The Administrative Law Court

Deborah Brooks Dunder-Administrative Law Judge

Case no-13 ALJ-04-0772-AP-Appellate Case no-2014-001060

Charles R Carter-246054

Appellant

South Carolina Department of Corrections

Respondent

Reply Brief To Respondent's Final Brief

F-27-20~~14~~2015

Charles R Carter-246054

P.O. Box 2039

Ridgeland SC 29936

1.	Index - - - -	1
2.	Table of authorities - - - - -	1
	U.S. vs Hill-Ex Re Wampler- 298 US 460	
	Tant US SCDC-718 SE2d-753	
	Tant US SCDC 759 SE2d-398	
3.	Argument and citation of authorities -	1- 2
4.	Certificate of service Argument	3

Contrary to Respondent's assertion on page 4 of his initial brief in the last paragraph- Appellant is appealing the agency's final decision of his step 11 grievance-not the agency's action regarding a request to recalculate his sentence because Appellant has never seen such a request- because no such request exists. Appellant's sentencing sheet reads 102-30 years PWID crack- There is no 44-53-375B on no 3rd offense or no 114. Appellant's indictment does not contain the statute of 0114- Drugs- Manufacture, distribution- ETC- ice- evant- crack cocaine 3rd or more. Respondent states that in 2013- this court and the supreme court's case law new rules emerged that did not exist in 1998- Therefore, it is a violation of the Ex Post-Facto clause to place Appellant under these new laws and stricter punishment which increased the amount of time he must serve without him knowing. Pursuant to Tant and Wampler- NO SCDC Records Clerk or Clerk of Court

2. Length of inmates incarceration implicates a Constitutional liberty interest for due process purposes.

Can modify an inmates sentence or can completely rewrite his sentencing sheet and enter a new code into its computer system which manufactures a new indictment and a new sentence without affording him due process of law. Pursuant to *Tant vs SCDC* Department of Corrections was limited to considering sentencing sheets when there is no ambiguity in sentencing sheets. In *Hill vs US Ex Rel Wampler* 298 US 460 the only sentence known to law is the sentence or the judgment entered upon records of the court and if entry is inaccurate, there is remedy by motion to correct it, but judgment imports verity when collaterally assailed. Warrant of commitment departing in matter of substance from judgment back of it is void. If judgment and sentence do not authorize accused detention, no mistrial will avail to make detention lawful. Therefore Appellants sentence is void pursuant to the *Wampler* holdings. In *Tant vs SCDC* 759 SE 2d 398 when the DOC decides that the its original recodation of a sentence is erroneous, it must afford the inmate formal notice of the amended sentence and advise him of his opportunity to be heard through the grievance procedure. Fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review which was never afforded for Appellant. This was all done by SCDC without affording Appellant due process of law.

Charles R. Carter.

The State of South Carolina
In The Court of Appeals

3

Appeal From The Administrative Law Court
Deborah Brooks Dunton - Administrative Law Judge

Case no-13ALJ-04-0772-AP Appellate Case no-2014-001060

Charles A Carter 246054

Appellant

V

South Carolina Department of Corrections

Respondents

Certificate of Service

I certify that I have served a Reply Brief to Respondents Final Brief by depositing a copy of it in the U.S. mail addressed to Staff Attorney Daniel J Crooks III AT PO Box 21787 COLA SC 29221 and to Jenny Abbott Kitchings SC Court of Appeals AT PO Box 11629 COLA SC 29221 with proper postage on this day of 1-27-2015

Charles A Carter 246054
P.O. Box 2034
Ridgeland SC 29936

Daniel J Crooks III
P.O. Box 21787
COLA SC 29223

RECEIVED
FEB 03 2015
SC Court of Appeals

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Dunder Administrative Law Judge

Case No - 13-ALJ-04-0772-AP

Appellate Case NO - 2014-001060

RECEIVED
FEB 03 2015
SC Court of Appeals

Charles R Carter 246054

Appellant

v

South Carolina Department of Corrections

Respondent

Final Brief of Appellant

1-27-2015

Charles R Carter 246054
P.O. Box 2039
Ridgeland SC 29936

Table of Contents

Table of Authorities	11-page 1
Statement of issue on Appeal	1 Page 1
Facts	Page 1-2
Arguments	Page 2
Conclusion	Page 3-4

1. Because Appellant's sentence was recalculated and modified by prison officials and the office of General Counsel outside the record by ex parte contact with court officials nearly one year after he had started his sentence without Appellant knowing or being involved, Appellant was denied due process of law which increased the amount of time he must serve by 10 years - See Respondent's Final Brief - Page 9 - line 15 - states that sentence was recalculated without a due process hearing, as required by SC Supreme Court's ruling in *Trent vs SCDC-759 Ser 2013-398-2014*

TABLE OF AUTHORITIES

Page 1 Tait vs SCDG 718-SE2d753-759 SE2d 398
US-USHill-Ex Rel-Wampler-298-US-460

Statement of Issues on Appeal

1. Did The Administrative Law Court Err in Failing To Find That Appellant was ~~not~~ denied due process

Statement of The Case

Appellant was sentenced to 30 years on 12-11-97 for PWED Crack in York County by Judge John C Hayes - see exhibit #4 line 6 - after being found guilty by Jury Trial see exhibit #2 - verdict form and was provided with a copy of his sentencing sheet - filled out and signed by Judge Hayes - offense code 102 - warrant # 45557 and a 30 year sentence see exhibit #5 - original sentencing sheet. After being transported to the ATE center where inmates are processed and classified he was assigned to McCormick CE on or about 1-1-1998 where he was classified by the ECC Board and told that his Parole Date was 1-5-04 and max out date DCI-7-2013 and was provided with documentation in support and proof of this information which was his Release date screen - see exhibit #6 line 6 and line 9.

FACTS

During The Late Part of 1998 while working on his PEA, Appellant sought a copy of certain documents from his case worker at McCormick CE. Upon doing so he discovered SCDG's computer had a different offense code and Drug Statute and that his Release date had changed and that he had NO Parole Date.

His Case Worker Told Him That She did not know where the information had come from. The Computer contained a new offense code of 3585 and the Drug statute read Manufacture - Dist - ETC That was completely different from the Drug statute in Appellant's original Indictment. The statute 3585 was not even enacted at the time Appellant was sentenced and did not even come out until around June 1998. So Appellant wrote to The York County Clerk of Court for a copy of his Sentencing Sheet to try and clear up the matter. See Letter to Clerk - Exhibit #7. There's nothing in the letter relating to 3rd offense as SCDC would later allege in its defense. See Exhibit #8 - Clerk's Response Dated 10-13-98 Falsely alleging that Appellant had requested a sentencing sheet showing 3rd offense which was untrue because the original sentencing sheet never contain the words 3rd offense. Subsequently, the original sentencing sheet came to Appellant but had been modified by adding code 114 and 3rd offense to it. See Exhibit #9. Then a commitment text by L. Cusack verifying that prison officials had been in touch with members of the York County Sheriff Dept named S. Willis and the Solicitor's office named Sally and the York Clerk of Court and that Appellant's sentence was modified from 102 to 114 per M. STOBBE Dated 10-16-98, all in Exhibit #10. Finally at Allendale CJ in 2010 Appellant was able to get a copy of a document showing how all this took place. See Exhibit #11 - Showing offense code 3585 - Manu - Dist - 3rd which is what comes out of the computer when code 114 is entered. Exhibit #12 is the New Release date screen showing march 2023. Exhibit #13 is Affidavit of SCDC Records Clerk Michael STOBBE admitting that he adjusted Appellant's records after Ex Parte contact with the York County Clerk of Court.

See Exhibit # 8-10-26-98 per statute in
concord with General Counsel

All This was done outside The Record By Prison Officials
after The Term of Court Had Well expired. Appellant was set
in going up For Parole and at least Making out in Oct-2013
Appellant Wrote To The Sentencing Judge who Responded
in letter date Sept 10-2014 That The Sentence indeed had
been changed But This was Six years Later and That
He Had No Jurisdiction over The Conviction at That
Time. All This was done ^{without} Appellant knowing or being
involved. On 10-4-2012 Appellant Filed A Step one grievance
and The Warden's Response States That The Sentence Had Been
modified, and That Appellant Must Serve 25 years 6 months. He then
Filed Step Two on 1-7-13. The grievance was held until 9-16-13
which denied Relief. See exhibit # 15-16 For Grievances
Also See Exhibit Verities # The original offense Code of 102
which is The General Session Pocket Report and The Disposition
of The Trial Arrest and Sentence. Appellant Appealed To
The Administrative Law Court. Relief was denied on 5-21-14
By Judge De. Ronald Brooks Darden.

Conclusion

Pursuant To Tenn US S&DC-718-Seed-753 Appellant was
denied due process of Law and a Protected Liberty Interest
was taken away from ^{him} unlawfully Pursuant To The 14th
Amendment. Due process Requires - Notice - A Hearing and Judicial
Review. The Drug Statute and Code of 3585 - Manufacturing
Dist - Etc actually constitutes Appellant Being Reincarcerated
and Resentenced By Prison Officials. The Only Remedy was To
Take Appellant Back To Court as in US vs Hill Ex Rel
Wampler - 298 US 466. The Separation of Powers is also Violated
Appellant's indictment is coded CDR code 112 which indicates a 1st
Offense.

4 Therefore Appellant Has Been Placed Under a new offense Code OF 114 while His indictment is 112 and Sentencing Sheet is 102 and A Different Drug Statute. That He was not indicted under and That was not created at The Time Appellant was Sentenced. Therefore Appellant's Sentence Expired in Oct-2013 and He Should Be Released From Custody immediately. Prison officials Have Placed Appellant under a Different Sentence other than what His Sentencing Sheet Reveals. See Exhibit #6 For initial Release date.

Wherefore Appellant Pray This Court Grant Him Relief, and That He Be Released From Custody Immediately

Charles R Carter 296054
P.O. Box 2039
Ridgeland SC 29936

Christopher Floran - Daniel J Crooks III
P.O. Box 21787
Columbia SC 29221
Attorney For Respondent

Appellant Should Have Been Released on 10-1-2013 while He is only Given 1 Hour Per Week in The Law Library To work on This Brief which is not considered a Deadline By The Librarian Here at Ridgeland.

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Dunden - Administrative Law Judge
Case No 13-AHJ-04-0772-AP
Appellate Case no-2014-009060

Charles R Carter 246054

Appellant

v

South Carolina Department of Corrections

Respondent

Final Brief
PROOF OF SERVICE

I certify that I have served a copy of the Final Brief on the Respondents by depositing a copy of it in the US Mail, Postage Prepaid addressed to Staff Attorney Daniel J Crooks III at P.O. Box 21787 29223 COLASC-29223 and to The Honorable Jenny ABBOTT Kitchings at The SC. Court of Appeals at P.O. Box 11629 COLASC 29211 on this day of ~~Jan~~ Jan 27th 2015.

Charles R Carter - 246054
P.O. Box 2039
Ridgeland SC 29936

Daniel J Crooks III
P.O. Box 21787
COLASC 29223

1-27-2015

RECEIVED

FEB 03 2015

SC Court of Appeals

Charles R Carter 246054
Ridgeland CI SA 28
P.O. Box 2039
Ridgeland SC
29936

RECEIVED

FEB 03 2015

SC Court of Appeals

RIDGELAND CORRECTIONAL
INSTITUTE

JAN 28 2015

MAILROOM

Deputy Clerk
The SC Court of Appeals
Ms. V. Claire Allen
P.O. Box 116 29
Columbia SC 29211



UNITED STATES POSTAGE
EAGLE
FIRST CLASS
PITNEY BOWES
02 1M
0008003003
MAILED FROM ZIP CODE 29936
\$ 00.690
JAN 28 2015

2521181529

