

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Case No.: 2014-ALJ-04-0365-AP
Appellate Case No.: 2014-002613

South Carolina Department of
Corrections,

Respondent,

v.

Kevin J. Daniels, SCDC#247291

Appellant.

BRIEF OF APPELLANT

Kevin J. Daniels, SCDC#247291
Appellant, pro-se
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

FEB 06 2015

SC Court of Appeals

LEGAL

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	iv
Statement of the Case	v
Facts	vi-ix
Argument(s)	1-5
Conclusion	6

TABLE OF AUTHORITIES

Caselaw:

State v. Perkins, 378 S. C. 57, 661 S. E. 2d 366 2

Dargenfield v. State, 2

Tant v. SCDC, 408 S. C. 334, 759 S. E. 2d 398 3

State v. Archie, 322 S. C. 135, 470 S. E. 2d 380 3

ESA Services, LLC v. S.C. Dept. of Revenue, (S. C. App. 2011) 392
S. C. 11, 707 S. E. 2d 431 4

Oakwood Landfill, Inc. v. S.C. Dept. of Health and Environmental Control,
381 S. C. 120, 671 S. E. 2d 646, 650-651 5

Statutes:

S. C. Code Section 24-13-40, 1, 2, 3, 4-5

S. C. Code Ann. § 1-23-380(A) (Supp. 2007), 5

S. C. Code Ann. § 1-23-380(A)(5), 5

STATEMENT OF THE ISSUES
ON APPEAL

- I. DID SCDC CORRECTLY CALCULATE APPELLANT'S SENTENCES?
- II. DID SCDC UNLAWFULLY IMPOSE THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680 ON APPELLANT WITHOUT A COURT OF COMPETENT JURISDICTION HAVING PROVIDED APPELLANT NOTICE AND A HEARING TO DETERMINE WHETHER APPELLANT VIOLATED THE CONDITIONS OF THE SUSPENDED SENTENCE?
- III. DID THE UNLAWFUL IMPOSITION OF APPELLANT'S SENTENCE AFFECT THE CALCULATION OF THE STRING OF CONCURRENT SENTENCES OF THE APPELLANT?
- IV. WAS THE FINAL DECISION OF THE AGENCY IN VIOLATION OF CONSTITUTIONAL OR STATUTORY PROVISIONS; IN EXCESS OF STATUTORY AUTHORITY OF THE AGENCY; MADE UPON UNLAWFUL PROCEDURE; AFFECTED BY OTHER ERROR OF LAW; CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; OR ARBITRARY OR CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION?

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal filed by Kevin Jerome Daniels, appellant in the case of: Kevin J. Daniels, #247291 v. SCDC, Appellate Case number 2014-002613 who is confined in the South Carolina Department of Corrections. The Appellant contends his sentences have been miscalculated by the South Carolina Department of Corrections and that the Order of Dismissal with Prejudice issued by the Administrative Law Court Judge, John D. McLeod dismissing appellant's case with prejudice and affirming the final decision of the South Carolina Department of Corrections should be reversed by this Honorable Court.

FACTS

The Appellant is lawfully incarcerated for two separate offenses, and the South Carolina Department of Corrections unlawfully incarcerated the Appellant on a third separate offense without judicial authority on indictment number 2012-GS-40-00680. Listed in the order of imposition and date of commencement of service of each offense they are as follows:

1. Indictment number 11-GS-32-00794: On October 7, 2010 Appellant was arrested by the West Columbia Police and accused of committing shoplifting less than two thousand dollars. Appellant was released on bond October 21, 2010. On January 13, 2011 Appellant was rearrested and detained in the Lexington County Detention Center to await trial and sentencing on the shoplifting offense for a bond violation. On June 3, 2011 Appellant pled guilty to the shoplifting offense in the Lexington County Court of General Sessions. The Honorable Knox McNabon sentenced Appellant pursuant to S.C. Code Section 16-1-57 to ten years incarceration suspended upon time served, three years probation and enter and successfully complete Phases I and II of the U-Turn-For-Christ long term, residential alcohol rehabilitation program. Appellant entered the U-Turn-For-Christ-Program ranch on June 3, 2011. On or about August 11, 2011 Appellant moved out of the U-Turn-For-Christ Program's facility without prior permission from his probation agent. Arrest warrant # W-32-11-0276 was issued for violation of probation on August 24, 2011 for the arrest of Appellant. On 8-23-2011 the Appellant was arrested by City of Columbia Police in Richland County for the offense of shoplifting less than two thousand dollars on arrest warrant #: K-689549. Appellant was detained in the Alvin S. Glenn Detention Center to await trial and sentencing. Appellant remained detained from August 23, 2011 through 9-13-2012 in the ASGDC with a detainer lodged against him filed by Lexington County DPPPS on 8-24-2011 for violation of probation bench warrant #: W-32-11-0276.

FACTS

On September 13, 2012 Appellant was sentenced in the Richland County court of general sessions Circuit Judge DeAndrea Benjamin sentenced Appellant for the offense of property crime 3rd or above, indictment number 2012-GS-40-00680 to six years of incarceration suspended upon the successful completion of the Well of Hope long term, residential alcohol addiction treatment program.

On September 14, 2012 Appellant was transferred from the Richland county jail to the Lexington county jail on the detainer for violation of probation warrant issued by the Lexington county probation office. On or about September 21, 2012 Appellant was advised by the Lexington county probation office to report from the Lexington county jail to the Well of Hope long term, residential alcohol addiction treatment facility and remain there until he successfully completed the Well of Hope Program and his Lexington county probation was continued until 12-14-2012. On 9-21-2012 Appellant reported to the Well of Hope facility and remained there until October 24, 2012 at which time and date Appellant left the facility and remained absent without the prior approval of his probation agent from Lexington county. On February 2, 2013 Appellant was arrested by City of Columbia Police in Lexington county charged with shoplifting value less than two-thousand dollars, and detained in the Lexington county jail from 2-2-2013 through 3-20-2013 awaiting trial on the offense. On or about 2-4-2013 a bench warrant for violating the conditions of the suspended ~~sent~~ sentence on indictment 2012-GS-40-00680 was lodged on the Appellant at the Lexington county jail as a detainer by Richland county Sheriff's department. On 2-4-2013 a detainer for violation of

FACTS

probation was placed on appellant at the Lexington county jail by the Lexington county probation department. Appellant remained detained in the Lexington county detention center pending the disposition of all the above mentioned detainers until 3-15-2013. On 3-15-2013 Appellant appeared in the Lexington county court of general sessions on the violation of probation warrant #: W-32-13-0022 before Circuit Judge Howard P. King. Judge King sentenced appellant on the violation of probation charge to five years of incarceration, vacated bench warrant #: W-32-11-0276, gave Appellant four days credit for pre-revocation hearing detention time. On 3-15-2013 ~~a detainer for K.J.D.~~ Appellant was transferred to the S.C. department of correction's Kirkland Reception and Evaluation Center to begin service of the five year sentence imposed by Judge King on 3-15-2013. A detainer for the Richland county suspended sentence on indictment number 2012-GS-40-00680 was placed on appellant's prison records on 3-20-2013 by the Richland county authorities, and Lexington county authorities on 3-30-2013 placed a detainer in Appellant's prison records for arrest warrant #: 2013A4021600469 for the offense of shoplifting less than two thousand dollars. On May 8, 2013 Appellant pled guilty in Lexington county general sessions court. Circuit Judge William P. Keesley sentenced Appellant to eight years of incarceration, concurrent to the probation violation sentence, above, and with credit time from February 2, 2013 pursuant to S.C. Code Ann. §24-13-40. On some date unknown to appellant the S.C. Dept. of Correction's Inmate Records division implemented the six year suspended sentence of appellant's on indictment #: 2012-GS-40-00680 without a court of competent jurisdiction having provided appellant notice and a hearing to appellant to determine whether

FACTS

Appellant violated the terms and/or conditions of the suspended sentence on indictment number 2012-GS-40-00680. Subsequently Appellant filed a Step I Inmate Grievance with the S. C. Dept. of Corrections alleging his sentence was miscalculated by the agency. The Step I Inmate Grievance was denied by the SCDC. Appellant filed a Step II Inmate Grievance about the issue which was also denied. The Appellant filed an appeal of the denial of his Step II Inmate Grievance to the Administrative Law Court. The Administrative Law Court upheld the final decision of the S. C. Dept. of Corrections and issued an order dismissing with prejudice the Appellant's appeal. The order of dismissal was signed and dated November 21, 2014 by John D. McLeod, Judge, South Carolina Administrative Law Court. Appellant filed a timely notice of intent to appeal in the South Carolina Court of Appeals.

This brief follows:

ARGUMENTS

I. BECAUSE THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS IMPLEMENTED APPELLANT'S SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680 WITHOUT A COURT OF COMPETENT JURISDICTION HAVING PROVIDED APPELLANT NOTICE AND A HEARING TO DETERMINE WHETHER APPELLANT VIOLATED THE CONDITIONS AND/OR TERMS OF THE SUSPENDED SENTENCE THE APPELLANT WAS DENIED DUE-PROCESS OF LAW.

On September 13, 2012 Appellant appeared in the Richland county court of general sessions on indictment number 2012-GS-40-00680 before the Honorable DeAndrea Benjamin, Circuit Court Judge. Judge Benjamin sentenced appellant on indictment number 2012-GS-40-00680 for the offense of shoplifting to six years of incarceration, with credit for 388 days of time served pursuant to S.C. Code Section 24-13-40, suspended upon the successful completion of Well of Hope longterm, residential alcohol rehabilitation program. See sentencing sheet in Respondent's Record.

On June 6, 2011 appellant appeared in the Lexington county court of general sessions on indictment number 2011-GS-32-00794 before the Honorable Knox McMahon, Circuit court Judge. Judge McMahon sentenced appellant on indictment number 2011-GS-32-00794 to ten years of incarceration, suspended upon time served, three years of probation, with special condition of probation of: enter and successfully complete U-Turn-For-Christ longterm, residential alcohol rehabilitation program Phases I and II. See Respondent's Record.

On 3-15-2013 appellant appeared in the Lexington county court of general sessions on violation of probation warrants #'s W-32-11-0276 and W-32-13-0022 before the Honorable Howard P. King, and was sentenced to five years of incarceration.

ARGUMENTS

On May 8, 2013, appellant appeared in the Lexington county court of general sessions on indictment number 2013-GS-32-01526 before the Honorable, William P. Keesley, Circuit Court Judge. Judge Keesley sentenced appellant on indictment number 2013-GS-32-01526 to eight years of incarceration and attend the ATU, (Alcohol Addiction Treatment Unit) of the South Carolina Department of Corrections, to be served concurrently with credit of time served from February 2, 2013 pursuant to S.C. Code Section 24-13-40. See sentencing sheet in Respondent's Record.

The Respondent SCDC informed appellant that his suspended sentence on indictment number 2012-GS-40-00680 was implemented after receipt of a letter from the Richland county clerk of court and SCDC interpreted the sentence on that indictment as an expired sentence.

In State v. Perkins, 378 S.C. 57, 661 S.E.2d 366 the Supreme Court of South Carolina explained that, "the trial court's imposition of his original sentence after being terminated from the Drug Court Program deprived Appellant of a conditional liberty interest and thereby entitled him due-process rights. See Dangerfield v. State, 376 S.C. 176, 181, 665 S.E.2d 352, 355(2008) (holding that the imposition of a suspended sentence deprived the defendant of a conditional liberty interest and implicated the defendant's due-process rights). Therefore, like any other defendant who is subject to the imposition of a suspended sentence we conclude that a Drug Court Program participant is entitled to notice and a hearing to determine whether he has violated the conditions of his suspended sentence before his sentence may be imposed." - State v. Perkins, 378 S.C. 57, 61.

In my case I receive no notice and no hearing to determine whether I violated the conditions of the suspended sentence on indictment number 2012-GS-40-00680 before SCDC

ARGUMENTS

imposed the six year suspended sentence related to indictment number 2012-GS-40-00680 on appellant in this case. Appellant was informed by a classification caseworker in June 2013 in an interview at the prison that SCDC had implemented the six year suspended sentence on indictment number 2012-GS-40-00680.

In this case not only were my due-process rights violated by the SCDC because they implemented and imposed a six year suspended sentence on appellant without a court of competent jurisdiction having provided appellant notice and a hearing to determine whether appellant violated conditions of the suspended sentence on indictment number 2012-GS-40-00680.

The Respondent SCDC imposed the original six year suspended sentence of indictment number 2012-GS-40-00680 on appellant sometime after 3-20-2013 without authority of the courts. - See Respondent Brief at p. 4.

In Tant v. SCDC, 408 S.C. 334, 759 S.E. 2d 398, the South Carolina Supreme Court citing, State v. Archie, 322 S.C. 135, 470 S.E. 2d 380 (Ct. App. 1996) held, "The exercise of sentencing authority by the Department would violate the separation of powers doctrine." - See Tant v. SCDC, 408 S.C. 334, 347 (2014).

In the order of dismissal the administrative law judge relying on S.C. Code Ann. § 24-13-40 which states in part that, "The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence." The holding of the administrative law judge based on the above language in S.C. Code Ann. § 24-13-40 was in error as it applies to the suspended sentence of appellant on indictment number 2012-GS-40-00680 because

ARGUMENTS

the South Carolina legislature intended that defendants under suspended sentences imposed by the courts of this State should receive credit for time served calculated from the date of commencement of the service of the sentence. - See S.C. Code Ann. § 24-13-40(c) (Supp. 2015).

The administrative law judge erred when he relied on the first part of the statute to determine and make his conclusion concerning the suspended sentence of appellant on indictment number 2012-GS-40-00680.

The statute is clear and unambiguous as to when credit for time served shall be computed and calculated in the case of suspended sentences. Without exception the legislature mandated that the credit for time served must be calculated from the date of the commencement of the suspended sentence.

In appellant's case of the sentence on indictment number 2012-GS-40-00680 the administrative law court held that the South Carolina Department of Corrections was correct to apply the credit for time served of 388 days on indictment number 2012-GS-40-00680 a six year suspended sentence, on the date the sentence was imposed, instead of the date of commencement of the service of the sentence as mandated by the State legislature in S.C. Code Ann. § 24-13-40(c) (Supp. 2015). That ruling by the administrative law judge was made in violation of the statutory laws of this State. The appellant is entitled to receive the 388 days of credit for time served on indictment 2012-GS-40-00680 to be calculated from the date appellant begins or commences service of the suspended sentence.

The South Carolina Court of Appeals held that, "Although reviewing court shall not substitute its judgement for that of the Administrative Law Court as to findings of fact, reviewing court may reverse or modify decisions that are controlled by error of law, or are clearly erroneous in view of the substantial evidence on the record as a whole." - FSA Services, LLC v. S.C. Dept. of Revenue, (S.C. App. 2011) 392 S.C. 11, 707 S.E. 2d 431.

ARGUMENTS

The South Carolina Court of Appeals further explained, "After an aggrieved party has exhausted all administrative remedies, the party is entitled to judicial review by the South Carolina Court of Appeals. See S.C. Code Ann. § 1-23-380(A) (Supp. 2007). Judicial review is confined to the record and is governed by South Carolina Code Section 1-23-380(A)(5), which provides:

The court may not substitute its judgement for the judgement of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency on remand the case for further proceedings, reverse or modify the decision if substantial rights of the appellant have been prejudiced. . . ." - Dakwood Landfill, Inc. v. S.C. Dept. of Health and Environmental Control, 381 S.C. 120, 671 S.E. 2d 646, at p.p. 650-651 (S.C. App. 2009).

In the case at hand Appellant's conditional liberty interests and State and Federal Constitutional Due-Process rights were violated by the South Carolina Department of Corrections and the South Carolina Administrative Law Court Judge when they found, "It was noted on Inmate's sentencing sheet that 388 days would be credited to this term of incarceration." - See Order of Dismissal at p. i.

This statement is false and misleading and constitutes a factual error on the part of the agency and the administrative law judge because the judge in his order of dismissal employs language that is substantially different from that contained on the actual sentencing sheet on indictment #2012-GS-40-00680. The administrative law judge incorrectly implies that it was the sentencing court's intent to limit the defendant's credit for time served to only be applicable to the original six year suspended sentence imposed on 9-13-2012, when truth is the exact opposite was intended by the sentencing court because the sentencing sheet on indictment #2012-GS-40-00680 clearly states, "credit of 388 days is given for time served pursuant to S.C. Code 24-13-40, and sentence is to be served concurrent." - See sentencing sheet in Respondent Record on indictment #2012-GS-40-00680.

CONCLUSION

For the reasons stated, this Court should reverse the judgement of the administrative law court judge, command the South Carolina Department of Corrections to credit (388) three hundred and eighty-eight days jailtime credits to appellant's sentence computation commencing on the date appellant begins service of his suspended sentence on indictment number 2012-GS-40-00680, and/or in the alternative, remand this case to the South Carolina Administrative Law Court for further development of the entire record concerning the dates of the commencement of the service of appellant's sentence that was suspended on indictment number 2012-GS-40-00680, and grant appellant any such other and further relief this Court deems just and proper in this case.

Respectfully submitted,

January 3, 2015



Kevin J. Daniels, SCDC #247211
Appellant, pro-se
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067
Date: January 3, 2015.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

John D. McLeod, Administrative Law Judge

Appellate Case No.: 2014-002613

Kevin J. Daniels, #247291,

Appellant,

v.

South Carolina Department of
Corrections,

Respondent.

PROOF OF SERVICE

I, Kevin J. Daniels, #247291, appellant in the above entitled case certify that I have served Appellant's Brief on Daniel J. Crooks, III, Staff Attorney by depositing a copy of it in the United States mail, postage pre-paid on 2-3-2015, addressed to: Daniel J. Crooks, III, Esquire, Staff Attorney, South Carolina Department of Corrections, Post Office Box 21787, Columbia, South Carolina 29221.

Dated: 2-3-2015.

Kevin J. Daniels
Kevin J. Daniels, #247291
Appellant, pro-se
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067
Date 2-3-2015

Sworn to and subscribed before me
this 22 day of Jan 2015.

X. Catherine A. Cramer
NOTARY PUBLIC OF SOUTH CAROLINA

My commission expires: _____.

My Commission Expires December 28, 2015

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SC Court of Appeals

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Kevin J. Daniels, #247291
Kershaw Correctional Institution
4548 Goldmine Highway
Kershaw, South Carolina 29067
1-22-2015

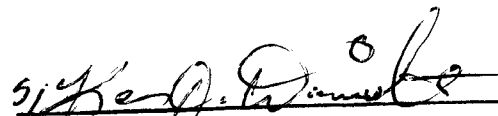
South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

Re: Kevin J. Daniels v. SCDC
Appellate Case No. 2014-002613

Dear Ms. Kitchings:

Please find enclosed one copy of Appellant's Brief and a Proof of Service showing service upon Respondent of same for filing in the above referenced case. Please file and process the enclosed and return a clocked-in copy to me for my records. Please waive any fees and or costs to return the clocked-in copy to me, in light of the fact I was granted permission to proceed in forma pauperis status in this case by the Court.

Thank you in advance for any time and attention you give this matter.
Sincerely,


Kevin J. Daniels, #247291
Appellant, pro-se
Date 1-22-2015

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From: Kevin J. Daniels, #247291
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SC Court of Appeals

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