

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAY 06 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Appellate Case No. 2014-002613

Kevin J. Daniels, #247291, . . . . . Appellant,

v.

South Carolina Department of  
Corrections, . . . . . Respondent.

REPLY BRIEF OF APPELLANT

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

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TABLE OF AUTHORITIES

Statutes: S. C. Code 24-13-40 . . . . . 1, 2,

Case Law: Perkins v. State, . . . . . 1, 3

Dangerfield v. State, . . . . . 1,

State v. Miller, . . . . . 1

Tant v. SCDC, . . . . . 2

State v. Archie, . . . . . 2, 3

## STATEMENT OF ISSUES ON APPEAL

- I. DID SCDC UNLAWFULLY EXERCISE JUDICIAL AUTHORITY BY IMPOSING THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680 ON APPELLANT WITHOUT A COURT OF COMPETENT JURISDICTION HAVING GIVEN APPELLANT NOTICE AND A HEARING TO DETERMINE WHETHER APPELLANT VIOLATED THE CONDITIONS OF THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680? Yes.
- II. DID THE UNLAWFUL IMPOSITION BY SCDC OF APPELLANT'S SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680 AFFECT THE CALCULATION OF APPELLANT'S STRING OF SENTENCES? Yes.
- III. 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 CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION? Yes.

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, Appellate Case No: 2014-002613 who is confined in the South Carolina Department of Corrections. Appellant contends that the South Carolina Department of Corrections an agency under the executive branch of State government unlawfully exercised the authority of the judicial branch of State government when the agency imposed the suspended sentence on indictment number 2012-GS-40-00680 on appellant before he was given notice and a hearing by a court of competent jurisdiction to determine whether appellant violated the conditions of the suspended sentence on indictment number 2012-GS-40-00680, and because of this unlawful exercise of judicial authority by an executive branch agency appellant's sentence has been miscalculated and extended beyond the lawful release date.

Appellant never at any time relevant to this case claim his sentence was miscalculated due to a clerical mistake, as Respondent allege on page 2 of the brief of respondent. Appellant has consistently alleged in the past pleadings that his due-process rights in the matter have been violated by South Carolina Department of Corrections because the agency violated the separation of powers clauses of the Federal and South Carolina Constitutions. Appellant realleges the same in this reply brief. Respondent's actions in this matter rise far above the level of a mere clerical error. Appellant will show that Respondent's actions are of a magnitude of constitutional violations dimensions and demands this Court's attention to right this most grievous of wrongs. Appellant's reply brief follows.

FACTS

PLEASE SEE INITIAL BRIEF  
OF APPELLANT

## ARGUMENTS

I. SCDC UNLAWFULLY EXERCISED JUDICIAL AUTHORITY BY IMPOSING THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS- 40-00680 ON APPELLANT WITHOUT A COURT OF COMPETENT JURISDICTION HAVING GIVEN APPELLANT NOTICE AND A HEARING TO DETERMINE WHETHER APPELLANT VIOLATED THE CONDITIONS OF THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012-GS-40-00680? Yes.

Appellant was sentenced in the Richland county court of general sessions on 9-13-2012 by the Honorable DeAndrea Benjamin Circuit Court judge to serve six years of incarceration suspended upon the successful completion of the Well of Hope and Restoration long term, residential christian alcohol and substance abuse treatment program, with 388 days jail time to be awarded defendant by the South Carolina Department of Corrections, pursuant to S.C. Code 24-13-40.

Appellant reported to the Well of Hope facilities in Columbia, South Carolina and remained there until October 14, 2012. Appellant voluntarily removed himself from the Well of Hope Program on October 14, 2012 without successfully completing the program. Several months later, on February 2, 2013 appellant was arrested in Lexington County on unrelated charges and detained in the Lexington County detention center to await trial on that case, after being tried and sentenced on the February 2, 2013 charges from Lexington appellant was transferred to the custody of the South Carolina Department of Corrections to begin service of the sentence he received in Lexington county on March 15, 2013. A bench warrant for the suspended sentence on indictment 2012-GS-40-00680 was placed on appellant when he was transferred to the South Carolina Department of Corrections on March 20, 2013 Appellant to this date of 4/27/2015 still never went to court to have a hearing to determine whether he violated the conditions of the suspended sentence from indictment 2012-GS-40-00680, however at some date and time between March 20, 2013 and June 1, 2013 the South Carolina Department of Corrections imposed the suspended sentence from indictment 2012-GS-40-00680 on appellant without any court giving appellant notice and a hearing to determine whether he violated the conditions of the suspended sentence on indictment 2012-GS-40-00680.

In Perkins v State, the South Carolina Supreme Court quoting, " Dangerfield v State, 376 S C 176, 181, 656 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 a hearing to determine whether he has violated the conditions of his suspended sentence before it may be imposed " Further, the Court explained in Perkins v State, that, " The decision of whether a defendant has violated a condition of his suspended sentence rests within the sound discretion of the trial court See State v Miller, 122 S C 468, 474-75, 115 S E 742, 745 (1923) ( holding that the nature of the inquiry and extent of the investigation to be conducted by a lower court in determining whether the condition of a suspended

sentence has been violated are matters that rest in the sound discretion of that court)

In the case of appellant the South Carolina Department of Corrections simply imposed the suspended sentence upon appellant after appellant was committed to the Department of Corrections on unrelated charges, no hearing and/or notice of a hearing has ever been given appellant concerning the imposition of the suspended sentence on indictment 2012-GS- 40-00680 as of today's date 4/27/2015 Yet, the Respondent has already imposed the sentence on appellant and denied appellant any due process in this matter

**II. APPELLANT IS ENTITLED TO HAVE THE CREDIT OF 388 DAYS JAILTIME FROM INDICTMENT 2012-GS-40-00680 CREDITED TO HIS SENTENCE ON THE DATE OF COMMENCEMENT OF SERVICE OF THE SUSPENDED SENTENCE ON INDICTMENT 2012-GS-40-00680**

South Carolina Code of Laws Section 24-13-40, states in pertinent 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 imposition of the sentence. However, when... (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence ..."

In the appellant's case the department of corrections imposed the suspended sentence on appellant without ever taking him to court in front of a judge of competent jurisdiction to determine whether appellant violated the terms and/or conditions of the suspended sentence on indictment 2012-GS-40-00680, this action violates the appellant's rights to due process under both the State and federal Constitutions. And, the department of corrections denied appellant the 388 days of jail credit that goes with the suspended sentence on indictment 2012-GS-40-00680 because appellant has never lawfully commenced service of the suspended sentence, therefore the department of corrections cannot lawfully do anything with the jail credits on that sentence due to the fact the credits can't be computed until the appellant commences service of the suspended sentence on indictment 2012-GS-40-00680, as is required by S C Code 24-13-40(C) See 24-13-40.

In Tant v. SCDC, 759 S.E. 2d 398, the South Carolina Court of Appeals quoting State v. Archie, 322 S.C. 135, 470 S E 2d 380 , explained that, " The exercise of sentencing authority by the Department would violate the separation of powers doctrine..." See State v Archie.

In appellant's case concerning the imposition of appellant's suspended sentence on indictment 2012-GS-40-00680, the department of corrections imposed the suspended sentence on appellant from indictment 2012-GS-40-00680 without any court of competent jurisdiction first having

provided appellant notice and a hearing to determine whether appellant violated the conditions of the suspended sentence on indictment 2012-GS-40-00680. This unauthorized exercise of sentencing authority by the department of corrections, an executive branch of government, agency is violative of the separation of powers doctrine and violates the appellant's due process rights under the South Carolina Constitution of 1895, and the United States Constitution - See above State v Archie, and Perkins v State


3.

## CONCLUSION

For the reasons stated this Court should reverse the judgment of the administrative law court judge, command the South Carolina Department of Corrections to credit 388, three hundred and eighty-eight days jail time credit 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 record concerning the date the commencement of the service of appellant's suspended sentence begins for indictment number 2012-GS-40-00680, and grant appellant any such other and further relief as the ends of justice may require in this case.

April 23, 2015.

Respectfully submitted,



Kevin J. Daniels, #247291

Appellant, pro-se

Hershaw Correctional Institution

4848 Goldmine Highway

Kershaw, South Carolina 29067

Date 4/23/2015

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS
AKA KEVIN JEROME DANIELS
Race BLACK Sex M Age 49
DOB 12-16-1962 SS#
Address
City, State, Zip
DL# SID#

INDICTMENT/CASE# 2012GS4000680
A/W# K689544
Date of Offense 8/23/2011
S C Code § 16-01-0057
CDR Code # 2367

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO Enhancement / Property offense, 3rd or sub conviction, enhancement to Felony E

in violation of § 16-01-0057 of the S C Code of Laws, bearing CDR Code # 2367
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act

The charge is As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST ALL BRITTON SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 6 days/months/years of under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 300, provided that upon the service of 15/300 days/months/years and/or payment
of \$ plus costs and assessments as applicable\*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference

CONCURRENT or CONSECUTIVE to sentence on
The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied
by the State Department of Corrections 300 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION Deferred Def Waives Hearing Ordered
Total \$ 500.00 plus 20% fee \$
Payment Terms
Set by SCDPPPS

PTUP
days/hours Public Service Employment

Obtain GED
Attend Voc Rehab. or Job Corp
May serve W/E beginning
Substance Abuse Counseling

Table with 3 columns: Description, Amount, Total. Rows include § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47 9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90 5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL

Random Drug/Alcohol testing
Fine may be pd in equal, consecutive weekly/monthly
pmts of \$ beginning
\$ paid to Public Defender Fund

Other credit
convert CIVIL Fine/Judgment

Appointed PD or appointed other counsel,
§ 47 12 requires \$500 be paid to Clerk
during probation

Clerk of Court/ Deputy Clerk Jeanette McBride
Court Reporter Holmes
SCCA/217 (03/2011)

Presiding Judge WJ
Judge Code 2161
Sentence Date 9-13-12



0-10 years, No fine

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington  
STATE VS.

INDICTMENT/CASE#: 2013GS3201526

Kevin J Daniels

A/W#. 2013A4021600469

AKA

Date of Offense: 2/2/2013

Race Black Sex M Age: 50

S C Code § : 16-13-0110(A)

DOB 12-16-1962 SS#: [REDACTED]

CDR Code # 2877

Address [REDACTED]

City, State, Zip [REDACTED]

DL# SID#

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO Shoplifting / Value \$2000 or less (Enhancement per 16-01-0057)

in violation of § 16-13-0110(A) of the S.C. Code of Laws, bearing CDR Code # 2877.  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury (defendant's initials)  
The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Robert J. Elam 064208 [Signature] 66261  
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 8 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*; ~~the balance is suspended with probation for~~

~~months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.~~ ATU

CONCURRENT or  CONSECUTIVE to sentence on  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT TIME FROM FEB. 2, 2013  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc Rehab or Job Corp. \_\_\_\_\_

Recipient: May serve W/E beginning \_\_\_\_\_

\*Fine Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$/00.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$

TOTAL \$130

Clerk of Court/ Deputy Clerk Beth A. Gause

Court Reporter Stacy Sheppard

SCCA/217 (03/2011)

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: PAY COURT COSTS W/IN 180 DAYS

OF RELEASE FROM ACTUAL INCARCERATION

\_\_\_\_\_

\_\_\_\_\_

Appointed PD or appointed other counsel,

§ 47-12 requires \$500 be paid to Clerk

during probation.

\_\_\_\_\_

Presiding Judge William P. [Signature]

Judge Code: 205D

Sentence Date: May 8, 2013

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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

Appellate Case No.: 2014-002613

Kevin J. Daniels, #247291, ..... Appellant,


vs

South Carolina Department of  
Corrections, ..... Respondent.

PROOF OF SERVICE

I, Kevin J. Daniels, #247291, appellant in the above captioned action, certify that I have served a copy of Appellant's Reply Brief on Daniel J. Crooks, III by depositing a copy of it in the United States Mail on 4/30/2015, addressed to: Daniel J. Crooks, III, Staff Attorney, South Carolina Department of Corrections, Post Office 21787, Columbia, South Carolina 29221.

Respectfully submitted,

  
Kevin J. Daniels, #247291

Appellant, pro-se  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067  
Date 4/30/2015 K.J.D. 4/23/2015

Sworn to and subscribed before  
me this 23 day of April, 2015.

Catherine A. Correa  
NOTARY PUBLIC OF SOUTH CAROLINA.

My commission expires: \_\_\_\_\_.

My Commission Expires December 22, 2018

LEGAL

Kevin J. Daniels, #247291  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067  
4/23/2015

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

**RECEIVED**  
MAY 06 2015  
SC Court of Appeals

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

Dear Ms. Kitchings:

Please find enclosed appellant's reply brief and proof of service for filing in the above referenced cases. Please file and process the enclosed, and return a clocked in copy of same to me for my records.

Thank you for your assistance with this matter.

Sincerely,

Kevin J. Daniels  
Kevin J. Daniels, #247291  
4/23/2015

**LEGAL**

From: Kevin J. Daniels, #247291  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

RECEIVED

MAY 06 2015

SC Court of Appeals

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

K. Daniels 247291  
LEGAL