

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Lower Case No.: 2014-ALT-04-0365-AP
Appellate Case No.: 2014-002613

Kevin J. Daniels, #247291,

RECEIVED

Appellant,

v.

JUL 24 2015

SC Court of Appeals

South Carolina Department of Corrections,

Respondent.

FINAL BRIEF OF APPELLANT

Kevin J. Daniels, #247291
Walden Correctional Institution
Bldg. 2 - 32T
4340 Broad River Road
Columbia, South Carolina 29210
Appellant, pro se
c. c.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (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 ADVERSELY AFFECT THE CALCULATION OF APPELLANT'S STRING OF CONCURRENT SENTENCES? Yes.
- III. WAS THE FINAL AGENCY DECISION 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 SUBSTANTIVE EVIDENCE ON THE WHOLE RECORD, OR CAPRICIOUS 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 J. Daniels, in the case of: Kevin J. Daniels, #247291 v. SCDC, Appellate case No.: 2015-002613 who is confined in the S.C. Dept. of Corrections at: Walden Correctional Institution. Appellant, Kevin J. Daniels contends that the South Carolina Department of Corrections, an executive branch agency of government unlawfully exercised the authority of the judicial branch of 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 to determine whether appellant violated the conditions of the suspended sentence on indictment number 2012-GS-40-00680, and because of the unlawful exercise of judicial authority by an executive branch government agency appellant's sentence has been miscalculated extending appellant's sentence end date by one year and twenty-three days.

Appellant filed his initial Brief on January 22, 2015. Appellant has never claimed his sentence was miscalculated by a clerical error or mistake as Respondents alleges in their Brief on page 2. I take exception to that statement by Respondents in their Brief. That statement has no veracity and is no more than a blatant attempt to mislead the Court in this case.

Appellant's Reply Brief was filed and served upon Respondent on January 22, 2015. This Final Brief of Appellant follows.

ARGUMENT

I. 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 PROVIDED APPELLANT NOTICE AND A HEARING TO DETERMINE WHETHER APPELLANT VIOLATED THE CONDITIONS OF THE SUSPENDED SENTENCE ON INDICTMENT NUMBER 2012GS 40-00680?

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 of jailtime to be awarded appellant/defendant by the South Carolina Department of Corrections pursuant to S.C. Code Section 24-13-40.

Appellant reported to the Well of Hope Facilities in Columbia, South Carolina remaining 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 the city of Columbia, within Lexington county on unrelated charges and detained in the Lexington county detention center to await trial on that case. After being 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 S. C. Dept. of Corrections on 3-20-2013. To this date of July 15, 2015 appellant has never appeared in court to have a hearing to determine whether he violated the conditions of the suspended sentence on indictment 2012-GS-40-00680, however, at some unknown date and time between March 20, 2013 and June 1, 2013 the S. C. Dept. of Corrections imposed the suspended sentence from indictment 2012-GS-40-00680 on appellant without a court of competent jurisdiction providing appellant notice and a hearing to determine whether appellant violated the conditions of the suspended sentence on indictment 2012-GS-40-00680.

In Perkins v. State, the South Carolina Supreme Court quoting, "Dangenfield 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. "

"The decision of whether a defendant violated conditions of his suspended sentence," the Court further explained in Perkins v. State, "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). "Id.

In appellant's case the South Carolina Department of Corrections simply imposed the suspended sentence upon appellant after he was committed to the Department's custody to begin service of a sentence not related to the suspended sentence on indictment 2012-GS-40-00680. The appellant to this date has never been provided notice and a hearing on the suspended sentence to determine whether he violated the condition of same. This action of imposing the suspended sentence on appellant by SCDC without notice and a hearing by the trial court denied appellant's U.S. Constitutional rights to due process.

II. APPELLANT IS ENTITLED TO CREDIT OF 388 DAYS OF JAILTIME FROM INDICTMENT 2012-GS-40-00680 CREDITED TO HIS SENTENCE ON THE DATE OF COMMENCEMENT OF THE SERVICE OF THE 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 commencement of the service of the sentence "

In appellant's case the State department of corrections imposed the suspended sentence on appellant without him having been provided notice and a hearing by a court of competent jurisdiction, to determine whether he violated the condition of the suspended sentence on indictment 2012-GS-40-00680. The DOC denied appellant the 388 days of jailtime credit attached to the suspended sentence on indictment 2012-GS-40-00680 since, appellant has never lawfully commenced service of the suspended sentence, therefore, SCDC is prohibited by law from computing the time served (388 days of jailtime) connected to the suspended sentence since, pursuant to S.C. Code Section 24-13-40 specifies that the time served is to be computed on the date of the commencement of the service of the suspended sentence. - See above

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 the suspended sentence on indictment number 2012-GS-40-00680, the Department imposed the suspended sentence upon 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 agency of State government is violative of the separation of powers doctrine and violates 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.

CONCLUSION

For the reasons stated this Court should reverse the judgement of the Administrative Law Judge; command the South Carolina Department of Corrections to Credit the (388), three hundred and eighty eight days jail time/time served 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 of the commencement of the service of appellant's suspended sentence begins on indictment 2012-GS-40-00680, and grant appellant any such other and further relief the ends of justice may require in this case.

5.

Signature page follows.

July 21, 2015.

Respectfully submitted,



Kevin J. Daniels #247291

Walden Correctional Institution,

Bldg. 2 - 32 T,

4340 Broad River Road

Columbia, South Carolina 29210

Date: 7/21/2015.

6.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Lower Case No.: 2014-ALT-04-0365-AP

Appellate Case No.: 2015-002613

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

JUL 24 2015

v. SC Court of Appeals

South Carolina Department of Corrections, Respondent.

CERTIFICATE

I, certify that the Final Brief of Appellant, Kevin J. Daniels, complies with Rule 21(b) SCACR and does not contain any issues nor changes from the Brief of Appellant.
July 21, 2015.

Respectfully submitted,

Kevin J. Daniels

Kevin J. Daniels #247291
Walden Correctional Institution

Bldg. 2 - 322

4340 Broad River Road

Columbia, South Carolina 29210

7/21/2015.

Appellant, pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Lower Case No.: 2014-ALT-04-0365 **RECEIVED**
Appellate Case No.: 2014-002613 JUL 24 2015

SC Court of Appeals

Kevin J. Daniels, #247291,

Appellant,

vs

South Carolina Department of Corrections,

Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Final Brief on Daniel J. Crooks, III, Staff Attorney by depositing a copy of it in the United States Mail, postage prepaid, on 7/21/2015, addressed to Daniel J. Crooks, III, Esquire, Staff Attorney, South Carolina Department of Corrections, Post Office Box 21787, Columbia, South Carolina 29221-1787.

7/21/2015

Respectfully submitted,

Kevin J. Daniels

Kevin J. Daniels, #247291

Appellant, pro se

Walden Correctional Institution

4340 Broad River Road

Columbia, South Carolina 29210

Date 7/21/2015.

Kevin J. Daniels, #247291
Walden Correctional Institution
4340 Broad River Road
Columbia, South Carolina 29210
July 21, 2015

South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29221

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JUL 24 2015

SC Court of Appeals

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

Dear Ms. Kitchings:

Please find enclosed a copy of Appellant's Final Brief and Proof of Service on opposing counsel. Please file and return a copy of same to me for my records. I've included a self-addressed envelope for your convenience.

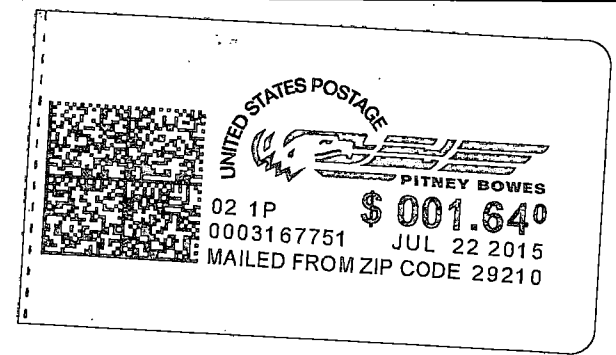
Thank you in advance for your assistance with this matter.

Sincerely,

Kevin J. Daniels
Kevin J. Daniels, #247291
Appellant, pro se
7/21/2015.

P.S.: Enclosed is a Certificate of Compliance with
Rule 211(b), SCACR.

From: Kevin J. Daniels, #247291
Walden Correctional Institution Bldg. 2, - 327
4340 Broad River Road
Columbia, South Carolina 29210

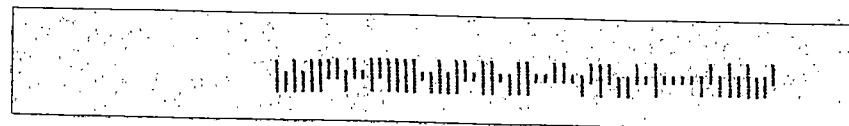


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JUL 24 2015

SC Court of Appeals

To: South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
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Columbia, South Carolina 29211



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THE DEPARTMENT OF CORRECTIONS HAS NOT
CENSORED THIS ITEM. THEREFORE, THE DEPARTMENT
DOES NOT ASSUME ANY LIABILITY FOR THE
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S.C. DEPARTMENT OF CORRECTIONS



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