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SC Court of Appeals

IV. STATEMENT OF CLAIM - continued.

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court [S.C. Dept of Corrections]
Shirley C. Robinson, Administrative Law Judge
Appeal No. 2016 - 000 431

Bernard McFadden, 199135

Appellant,

VS.

South Carolina Dept of Corrections,

Respondent.

Brief of Appellant With
Supporting Declaration

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8

Table of Content

Table of Authorities	0
Statement of Issues On Appeal	1
Statement of Case	2
Facts	2-3, 4-7
Arguments	
1) Where the PCR court - like McFadden's 2010 criminal trial court - can rely on SCDC's false max-out date in McFadden's file, the Administrative Law Court did err in finding issue moot, in violation of McFadden's 14 th Amendment right in light of <u>Paine vs. Baker</u> , 595 Fed. 197, 202 (U.S. App. 4 th Cir. 1979)	3-4
2) Where McFadden claimed SCDC miscalculated his sentence start date in violation of procedural due process under the 14 th Amendment, the Administrative Law Court did err in finding McFadden's challenge to his sentence is more appropriate in (PCR), in light of <u>State vs. Boggs</u> , 696 S.E.2d. 579, 598 (S.C. App. 2010); and <u>Alshabazz vs. State</u> , 527 S.E.2d. 742, 750 (S.C. 2000)	4-6
Declaration of Bernard McFadden	6-7
Conclusion	7

Table of Authorities

Case Laws

- | | |
|---|-----|
| 1) <u>Al-Shabazz vs. State</u> , 527 S.E2d 742 (S.C. 2000) | 5-6 |
| 2) <u>McClam vs. State</u> , 686 S.E2d 203 (S.C. App. 2009) | 4 |
| 3) <u>Palme vs. Baker</u> , 595 Fed 197 (U.S. App. 4 th Cir. 1979) | 2-3 |
| 4) <u>State vs. Briggs</u> , 696 S.E2d 579 (S.C. App. 2010) | 5 |

S.C. Statute

- | | |
|-------------|---|
| 1) 24-13-40 | 3 |
|-------------|---|

Statement of Issues On Appeal

1) Where the (PER) court - like McFadden's 2010 criminal trial court - can rely on SCOC's false max-out date in McFadden's file, did the Administrative Law Court err in finding issue moot, in violation of McFadden's 14th Amendment rights in light of Paine vs. Baker, 595 F.2d 197, 202 (U.S. App. 4th Cir. 1979)?

2) Where McFadden claimed SCOC miscalculated his sentence start date in violation of procedural due process under the 14th Amendment, did the Administrative Law Court err in finding McFadden's challenge to his sentence is more appropriate in (PER) in light of State vs. Boggs, 696 S.E.2d 579, 588 (S.C. App. 2010); and Al-Shabazz vs. State, 597 S.E.2d 742, 750 (S.C. 2000)?

Statement Of The Case :

McFadden's conviction was vacated in 2002. (See Record On Appeal at p. 7, S.C. Supreme Court's July 11th, 2002, Order.) McFadden requested and was denied an audit to correct an incorrect 12/25/2000 max-out date for arrestwarrant # E-09123 (Indictment # 95-C5-14-187) to the correct max-out / sentence start date of April 15th, 1995. Appellate filed a grievance on 10/13/2015. After finding that McFadden was advised by a Mr. Eury that the sentencing judge and the clerk failed to add jailtime credit, Warden Dunlap determined McFadden's alleged incorrect max-out date could not be adjusted by SCDC. Appellate then filed a Step Two Grievance; this grievance was denied by Mrs. J. G. Gaston and received on 6/16/2015.

On 6/19/2015, McFadden deposited his Notice Of Appeal in the US Mail to the S.C. Administrative Law Court that was docketed 6/24/2015. The ALC found that it lacked jurisdiction for two reasons: 1) to the extent McFadden has raised an issue cognizable in an administrative action, the issue is moot; and 2) McFadden's challenge to his sentence is more appropriately raised as part of his pending (PCR) action. The ALC court dismissed this case on 01/27/2016. This appeal follows.

Facts For Argument # 1:

The record before this court will show the following facts: Although McFadden cited Paine vs. Baker, 595 Fed. 197, 202 (App. N.C. 4th Cir 1979) to demonstrate false information in a prisoner's file will deny due process if relied upon in a decision making process, the ALC's 01/27/2016 Order of Dismissal didn't even mention

6

Paine. (See R01A at pgs. 47-52.) And although McFadden cited State vs. Boggs, 696 S.E.2d 579, 598 (S.C. App. 2010) - to illustrate that even if the trial judge didn't give any jailtime in 1995, SDC will still have to add it because it's a statutory right pursuant to Atte 24-13-40 - the ALC (like Paine) didn't even mention State vs. Boggs.

In Paine, the 4th Circuit U.S. Court of Appeals stated if an error in a prisoner's file is a technical one which would not reasonably be a factor relied on in decision making process, no claim for relief under due process will lie, but if error is more significant, that is, involves inmate's past criminal record or his record of disciplinary offenses while in prison, fundamental fairness requires its expunction for reason that it may reasonably be relied on. Id. at 595. Fed. 197, 200.

Argument:

Like the 2010 trial court in McFadden's criminal case relied on this false information as a decision making process within the meaning of Paine, the (PCR) court in McFadden's pending case can also rely on this clearly erroneous 12/25/2000 sentence start date for arrest warrant # E-017123. (See R01A at p. 11, erroneous because McFadden was arrested by George McConner on 4/15/2015 - not on 6/01/1995.

Additionally, because there's a controversy as to whether the 4/15/1995 sentence start date is correct versus the 6/01/1995 date claimed by SDC, McFadden contends this case is not moot. And by correcting the erroneous 6/01/1995, the (PCR) court can

then rely on accurate administrative agency's records in its decision making process. Thus, there is a practical legal effect upon existing controversy. See McClam vs State, 686 S.E.2d 203, 206 (S.C. App. 2009) (A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.)

Therefore, because this false information can be again relied on within the meaning of Paine vs. Baker, 595 F.2d 197, 201 (U.S. App. 4th Cir. 1979), this court should find an implication of possible violations of McFadden's due process rights under the U.S. Constitution's 14th Amendment. And that the ALC finding this case moot (ROA at p. 49) did err in light of the dispute between two dates.

Facts For Argument # 2:

The record before this court will show the following facts: McFadden maintained in his grievances and in the ALC that the SDC [Warden Dunlap] claims that he is not entitled to jail-time credits from 4/15/1995 because the judge didn't give credit. (See ROA at pgs. 3 and 9 of 52, McFadden's Original Brief... and Warden Dunlap's 10/18/2014 decision attached as Attachment B.) No where in McFadden's agency grievance (ROA at p. 2), in McFadden's Original Brief (ROA at pgs. 3-16) or in McFadden's Reply Brief (ROA at pgs. 28-36) does McFadden claim the 1995 sentencing judge McGinnis's sentencing is in error - only SDC.

However, the ALC court construed this case as if McFadden is attacking the sentencing court. The ALC stated, "Although Appellant is attacking his sentence length and not his conviction, his

ultimate goal is to attack his 2010 conviction in his pending (PCR) action. The attack on his sentence in this court is merely a part of his (PCR) case. Therefore, while Al-shabazz holds this court has jurisdiction over non-collateral, administrative matters related to sentencing, and sentence-related credits, I find this case, at its heart, a piece of a collateral attack on Petitioner's 2010 conviction, which the supreme court, in Al-shabazz, held is a matter for the PCR Court. (See ROA at p. 51, Order of Dismissal at p. 5 of 6.)

While McFadden claims SCDC has miscalculated his sentence start date, SCDC claims the judge didn't give McFadden credit. (See ROA at p. 9, Dunlop's 12/18/2014 disposition in Step 1 Governance #KRCI-1176-14.) Even if Judge McGinnis denied any credit for jailtime, McFadden contends he should still be given credit in light of State vs. Boggs, 686 S.E.2d 597, 598 (S.C. App. 2010) (holding that plea judge denial of jailtime credit for time defendant served in pretrial detention based on state's decision to drop charges against defendant from armed robbery to strong armed robbery was an error of law.)

As the court knows, under title 24-13-40, McFadden has a statutory right to jailtime credit, and because of this statutory right - creating a liberty interest under the U.S. Constitution's 14th Amendment - SCDC has a duty to properly calculate his sentence for time served since 4/15/1995, rather than 6/1/1995.

Additionally, this court is well aware ALC is the sole court for which McFadden must bring his complaint about the miscalculation of his sentence. See Al-shabazz vs. State, 527 S.E.2d 942,

9

750 (S.C. 2000) (Stating credit relating issues cannot be raised in (PCR)).

Therefore, where the pending (PCR) court - like McFadden's 2010 criminal trial court - can rely on this false information, within the meaning of Parke, and where McFadden has a statutory right to jailtime credit, and where complaints of mis-calculation of sentence can only be raised in the ALC, this court should reverse and instruct an audit of McFadden's sentence to the correct 4/15/1995 start date for arrest warrant # E-017123. (See R01A at p. 11.)

Declaration of Bernard McFadden, 199135:

1) I, Bernard McFadden, 199135, declare that all documents and facts referred to in this Initial Brief are true and correct.

2) That there's reason out-side of the record to believe that SCOC's classification personnel are deliberately maintaining this false information. That, in fact, there's reason to believe prior to trial in September 2010, the false 12/25/2000 max-out date was placed in my record to be relied upon during trial.

3) When a hung jury was declared in my September 2010 trial, I was immediately brought back the next and last term of the year in 2010, for they couldn't use this false information after 12/25/2010.

4) My appointed attorney Willie Brinson was also informed about this erroneous max-out date, but did nothing.

5) I declare under penalty of perjury this 25th day of

March 2016, that the foregoing is true and correct.

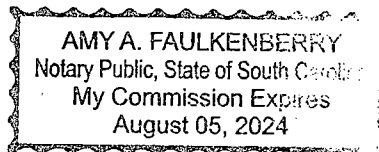
[Signature]
Bernard McFadden, 199135

Conclusion

For the foregoing reasons, this court should reverse the judgment of the Administrative Law Court.

Respectfully Submitted,
[Signature]
Bernard McFadden, 199135
Kershaw CI / 082
4848 Goldmine Hwy
Kershaw, S.C. 29069

Sworn And Subscribed Before Me
This 25th day of March, 2016
[Signature]
Notary Public For South Carolina
My commission expires: 8-5-24



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Appeal Case # 2016 - 000431

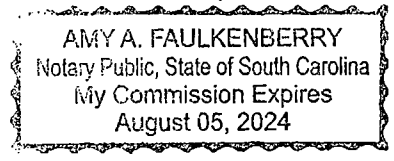
The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly-addressed-stamped-envelope in the U.S. Mail this 25th day of March, 2016; such matter being: McFadden's Initial Brief with Supporting Declaration And McFadden's Record on Appeal!

1) Christina Catoe Bigelow, Assist.
General Counsel, SCDC, 4844
Broad River Rd., Columbia,
South Carolina 29201; and

2) Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals, Post Office
Box 11629, Columbia, South
Carolina 29211

Sworn And Subscribed Before Me
This 25th day of March, 2016
Amy A. Faulkenberry
Notary Public For South Carolina
My Commission Expires: 8-5-24

Bernard McFadden
Bernard McFadden, 198125
Appellant, Pro se



Bernard McFadden, 122135
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SC Court of Appeals

Jenny Abbott Kitchens, Clerk
S.C. Court of Appeals, Post
Office Box 11629, Columbia
South Carolina 29211

RE: McFadden vs S.C. Dept. of Corrections, Appeal # 2016-
000431

Dear Clerk:

Enclosed, please find McFadden's Initial Brief with Supporting Declaration and McFadden's Records on Appeal for filing in your office.

Thanking you in advance,

Sincerely,
SI [Signature]
Bernard McFadden

*Deposit for mailing also documented on SCDC form 10-14 dated 03/25/2016.

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