

STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 06 2016

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Administrative Law Judge Shirley C. Robinson

ALC Case No. 15-ALJ-04-0078-AP
Appellate Case No. 2015-001519
Opinion No. 2016-UP-281

JAMES A. SELLERS, # 243348,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO APPELLANT'S PETITION FOR REHEARING

On June 8, 2016, this Court issued an unpublished opinion affirming the decision of the Administrative Law Court. On June 21, 2016, Appellant served a Petition for Rehearing. On June 27, 2016, this Court issued a letter requesting a Return to the Petition for Rehearing within ten days of the date of the letter. This Return follows.

Appellant's Petition for Rehearing should be denied. Appellant is incorrect that the Department is miscalculating his sentence for the accessory before the fact to murder. The statute in effect at the time of Appellant's sentencing is currently located at S.C. Code § 16-1-40 and reads: "A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or

otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, *must be punished in the manner prescribed for the punishment of the principal felon.*” (emphasis added). Since the principal felony in this case is murder, the accessory, Appellant, was to be sentenced under S.C. Code § 16-3-20. Although Appellant’s sentencing judge departed from the statutory language requiring at least a thirty-year sentence, and instead gave Appellant five years less than the statute required, this does not change the fact that Appellant is serving a sentence under S.C. Code § 16-3-20, and such a sentence, if not a death sentence, must be served day-for-day.¹ See S.C. Code § 16-3-20 (A) (“No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.”). As this Court properly found, it would be patently absurd to allow Appellant – who has already received a mercy from the sentencing judge in light of his nonconforming twenty-five-year sentence – to circumvent the legislature’s clear intent that offenders sentenced for murder serve their sentences day-for-day.


¹ Obviously, the legislature did not contemplate that a trial judge would depart from the language in the statute and issue a nonconforming sentence. The fact that this was done in Appellant’s case, however, does not alter the Department’s duties in applying the plain language of the murder statute.

CONCLUSION

Because this Court properly affirmed the decision of the Administrative Law Court below, Respondent respectfully requests that this Court deny Appellant's Petition for Rehearing.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S.C. Department of Corrections
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(803) 896-8508

ATTORNEY FOR RESPONDENT

July 6, 2016

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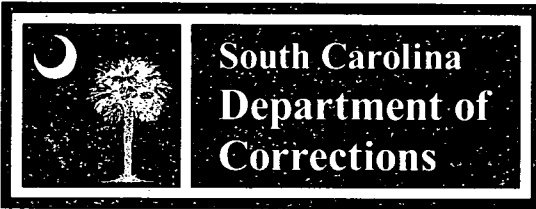
CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, she mailed a copy of the **Return to Appellant's Petition for Rehearing** to Appellant via U.S. Mail addressed as follows: **James A. Sellers, # 243348, Wateree River Correctional Institution, Post Office Box 189, Rembert, South Carolina 29128.**



Christina Catoe Bigelow
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July 6, 2016



South Carolina
Department of
Corrections

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

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SC Court of Appeals

OFFICE OF GENERAL COUNSEL

July 6, 2016

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

RE: James A. Sellers, # 243348, v. South Carolina Department of Corrections
Appellate Case No. 2015-001519

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's **Return to Appellant's Petition for Rehearing** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: James A. Sellers, # 243348
Wateree River Correctional Institution
Post Office Box 189
Rembert, South Carolina 29128