

IV. STATEMENT OF CLAIM - continued.

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SC COURT OF APPEALS

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. 2016-000431

Bernard McFadden, 199135,

Appellant,

vs.

South Carolina Dept. of Corrections,

Respondent.

Final Brief

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## Statement of Issues On Appeal

- 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, did the Administrative Law Court err in finding issue moot, in violation of McFadden's 14<sup>th</sup> Amendment rights in light of Paine vs. Baker, 595 Fed. 147, 202 (U.S. App. 4<sup>th</sup> Cir. 1979)?
- 2) Where McFadden claimed SCDC miscalculated his sentence start date in violation of procedural due process under the 14<sup>th</sup> Amendment, did the Administrative Law Court err in finding McFadden's challenge to his sentence is more appropriate in (PCR) in light of State vs. Boggs, 696 S.E.2d 579, 588 (S.C. App. 2010); and Al-Shabazz vs. State, 527 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 11<sup>th</sup>, 2002, Order.) McFadden requested and was denied an audit to correct an incorrect 12/25/2000 max-out date for arrest warrant # E-019123 (Indictment # 95-C5-14-187) to the correct max-out / sentence start date of April 15<sup>th</sup>, 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 01/29/2016. This appeal follows.

## Facts For Argument # 1:

The record before this court will show the following facts: Although McFadden cited Paine vs. Baker, 595 F.2d 197, 202 (App. N.C. 4<sup>th</sup> 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 01/29/2016 Order of Dismissal didn't even mention

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Paine. (See ROA 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 title ~~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, 202.

### 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 ROA at p. 11, erroneous because McFadden was arrested by George McComber 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

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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.W.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, 395 F.2d 197, 201 (U.S. App. 4<sup>th</sup> Cir. 1979), this court should find an implication of possible violations of McFadden's due process rights under the U.S. Constitution's 14<sup>th</sup> 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 SCDC [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 McGiants sentencing is in error - only SCDC.

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

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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, Dunlap'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, 696 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 14<sup>th</sup> 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 742,

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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 Paine, and where McFadden has a statutory right to jailtime credit, and where complaints of mis-calculation of sentence can only be raised in the MLC, 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 Rott 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 25<sup>th</sup> day of

March 2016, that the foregoing is true and correct.

*[Signature]*  
Bernard McFadden, 199135

**Conclusion:**

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

Respectfully Submitted,  
*[Signature]*  
Bernard McFadden, 199135  
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Sworn And Subscribed Before Me  
This 25<sup>th</sup> day of March 2016  
Amy A. Faulkenberry,  
Notary Public For South Carolina  
My commission expires: 8-5-24

