

LEGAL MAIL

The State of South Carolina

In The Supreme Court **RECEIVED**

Appeal From The Administrative Law Court

MAR 01 2016

DeBouch Brooks Durdan-Administrative Law Judge

SC Court of Appeals

Appellate Case NO-2014-001060

Opinion NO-2015-UP-505

Gen Counsel

Submitted Sept 1st 2015 - Filed Nov 1st 2015

Charles Ray Carter Appellant

South Carolina Department of Corrections Respondent

Petition For A Writ Of Certiorari

Other Counsel of Record

Christina Carole Bigelow

P.O. Box 21787

Columbia SC 29221

Charles Ray Carter 24654
prose petitioner

P.O. Box 2039

Ridgeland SC 29936

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The State of South Carolina

In The Supreme Court

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Appeal From The Administrative Law Court

MAR 01 2016

Reborah Brooks Durden-Administrative Law Judge
SC Court of Appeals

Appellate Case NO-2014-001060-OPINION NO-LP-UP-2015-505
Submitted 9-1-2015-Filed-11-1-2015

Charles Ray Carter 246054-Appellant

South Carolina Department of Corrections- Respondent

PETITION FOR A WRIT OF HABEAS CORPUS

Motion To Proceed in Forma Pauperis

The Petitioner hereby declares under penalty of perjury that he has been injured by the ~~defendant~~ Respondents and that due to his poverty he is unable to pay the cost of filing this action and requests that this action be filed without prepayment.

Charles Ray Carter 246054
P.O. Box 2039 SA 28
Ridgeland SC 29936

Other Counsel of Record

Christina Catoe Bigelow esquire

P.O. Box 21787

Col 95C-29221

Certificate of Counsel

I, Charles Ray Carter certify that this petition contains no material which is irrelevant to this appeal

Charles Ray Carter 246054

The State of South Carolina
In The Supreme Court

Appeal From The Administrative Law Court
Deborah Brooks Durden-Administrative Law Judge
Appellate Case NO-2014-001660-opinion NO-2015-UP-505

Charles Ray GARDEN 246054-Appellant

South Carolina Department of Corrections-Respondent

Petition For A Writ of Certiorari

PROOF OF SERVICE

I certify that I have served a copy of this petition on all parties
by depositing a copy of it in the U.S. mail with proper postage on this day
of 2-25-2016 addressed to the following parties - Daniel Shearman P.O. Box
11330 COLASC 29211 - Jenny Abbott Kitchings - P.O. Box 11629 COLASC 29211
Deborah Brooks Durden 1205 Pendleton Street COLASC 29211 - SCDC office
of General Counsel Christina Catoe Bigelow - P.O. Box 21787 COLASC 29721.

Charles R Carter 246054
P.O. Box 2039
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Statement of The Case

Petitioner Arrested in York County S.C. on 4-1-97 and charged with PWID Crack under Code 162 according to the ARREST Warrant E 455557-See Exhibit #1 of index

and was indicted for PWID Crack under 44-53-375 Code of Laws CDR code 112 according to the Indictment #97GS-464609 as Exhibit #2 of Index After Being Found Guilty By Jury By Trial He was Sentenced to 30 years By Judge John C Hayes. See original Sentencing Sheet Code 102-Exhibit #3 of index and #4-page 261 of Trial Record Line 6-7 showing 30yr sentence and #5 Guilty Verdict Form. When petitioner Arrived at His assigned institution to begin His sentence at McCormick CI-At His initial classification hearing He was told By the Inmate Classification Committee (ICC) that He must serve 15 years 10 months to max out His sentence and that His Release Date was 10-7-2013 and Parole Date was 1-5-04 and was presented Documentation to verify His Parole Date and Release Date called Release Date screen-See Exhibit #6 of index.

Later on in 1998 Petitioner wrote to York County Clerk of Court for a copy of His original Sentencing Sheet and to inquire about a Detainer Not Related to His conviction. See letter to Clerk as Exhibit #7 of Index, Because SCDC Records was All of a sudden different and showing a different Sentencing Sheet and Indictment. See letter to Clerk as Exhibit #9 of index. The original Sentencing Sheet in His inmate Files was now showing Code 114 and also The words 3rd offense had been added. See Exhibit #8 of index.

That's when Petitioner went to His case worker who then showed Him that SCDC Computers had a different Code and Drug Statute as opposed to the Statute in His original indictment. The Statute was now 3585 MANUF-DIST-ECR. This Statute was not not even out at the time of Petitioners conviction and sentence and was not created until June 1998. That's when Petitioner began this never ending challenge to His modified sentence that had increased the amount of time that He must serve from 15 years 10 months to 25 1/2 years.

That's when Petitioner went to His case worker who then showed Him that SCDC Computers had a different Code and Drug Statute as opposed to the Statute in His original indictment. The Statute was now 3585 MANUF-DIST-ECR. This Statute was not not even out at the time of Petitioners conviction and sentence and was not created until June 1998. That's when Petitioner began this never ending challenge to His modified sentence that had increased the amount of time that He must serve from 15 years 10 months to 25 1/2 years.

1. Was Petitioner denied Due Process of Law and Affected Liberty Interests Afforded by the 14th Amendment and a State Created Statutory Right when the Court sentenced him under a Sentence and S.C.O.C. Prison officials Modified his Sentence to increase the amount of time that he must serve from 51% to 85% which is 10 years without Petitioner knowing.
2. Was this a violation of the Ex Post Facto Clause and the Separation of Powers Act.

LEGAL MAIL

Pursuant to TANT VS SCDC 759 Se2d 398

When The Department of Corrections decided that its original Recordation of a Sentence was erroneous, it must afford the inmate formal notice of the amended sentence and advise him of his opportunity to be heard through the Grievance Committee. The Department is usually confined to the face of the sentencing sheet in determining the length of a sentence unless there is ambiguity. The fundamental requirements of due process requires a notice, a hearing and meaningful judicial review. The length of an inmates sentence and incarceration implicates a constitutional liberty interest of due process purposes. Ambiguity or doubts relative to a sentence should be resolved in favor of the inmate. In HILL VS US-298 US 460- The only sentence known to law are the sentence or judgement entered upon records by the court and if entry is inaccurate, there is remedy by motion to correct it. But ~~judgment departing from the substance~~ but judgment imports verity when collaterally assailed. A warrant of commitment departing in matter of substance from the judgment back of it is void. any provision in a commitment for imprisonment which was inserted by the clerk but not included in the sentence pronounced by the judge is void. The commitment text which is pronounced that petitioners sentence was modified from 102 to 114 by exhibit #9 states with the clerks office and solicitors office outside the records SCDC records clerk Michael Stobbes Affidavit ~~is~~ exhibit #10-P-2-line 6 states that a corrected sentencing sheet was faxed by the clerks office which is also a separation of powers doc and ex parte contract sec exhibit #10 Stobbes Affidavit and # 11-Gen-Sess-Docket Report verifying code 102 and 30 YR sentence and letter from Judge Hayes stating that sentencing sheet had been connected but not by him AS exhibit # 12.

Argument continued

On 4-4-2012 petitioner Filed A Grievance with SCDC That was Returned on 12-7-2012 By Warden Lavenn Cotten who in His Response That Petitioners Sentencing sheet By York County Clerks of Court From 102 To 114. See Warden's Response on Back of Exhibit #13. Petitioner Then Appealed To SCDC Central agency on 1-7-2013 on 8-23-13 The agency Responded stating That Petitioners Had Been Corrected Not Modified. see exhibit #14. However Exhibit #9 and #13 admits That The Sentencing sheet was modified. Fraudily In Respondents Final Brief To The ALC which is Exhibit #15- Respondents Admitt That they Changed The COR Code and Recalculated Petitioners Sentence.

Conclusion

Therefore, The ALC Errored Affirming The SCDC agency Final Decision when The agency it self Has Admitted That They Modified Petitioners Sentence By Ex parte contact outside The Record with York County Solicitors office and Clerk of Courts office and That They Recalculated Petitioners Sentence without affording Him Due process which Has caused Him To continue To in prison after His original Sentence Has Been Completed where Fore Petitioner pray That This Court Grant Relief and order That He Be Released From prison immediately.

Charles R Carter 246054
 PO Box 2039
 Ridgeland SC 29936

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The South Carolina Court of Appeals

Charles Ray Carter, #246054, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001060

ORDER


After careful consideration, Appellant's petition to proceed *in forma pauperis* is granted.

 AS
FOR THE COURT

Columbia, South Carolina

cc:

Charles Ray Carter, #246054
Christopher D. Florian, Esquire

FILED
9/5/14 

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Charles Ray Carter, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001060

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Unpublished Opinion No. 2015-UP-505
Submitted September 1, 2015 – Filed November 4, 2015

AFFIRMED

Charles Ray Carter, pro se.

Daniel John Crooks, III, of the South Carolina
Department of Corrections, of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Code Ann. § 1-23-610(B) (Supp. 2014) ("The court of appeals may . . . reverse or modify the [ALC's] decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory

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authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."); *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 69, 663 S.E.2d 497, 504 (Ct. App. 2008) ("To prevail on a claim of denial of due process, there must be a showing of substantial prejudice."); *James Acad. of Excellence v. Dorchester Cty. Sch. Dist. Two*, 376 S.C. 293, 299, 657 S.E.2d 469, 472 (2008) (recognizing the State may cure a procedural deprivation of due process by providing a subsequent procedural remedy); *State v. Bennett*, 375 S.C. 165, 173, 650 S.E.2d 490, 495 (Ct. App. 2007) ("While [CDR] codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law."); *id.* ("Any errors in a CDR code do not affect the crime, its characterization as violent or non-violent, for example, or even if someone can be prosecuted for a crime."); *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) ("[T]he Department [of Corrections] is confined to an unambiguous sentencing sheet in determining an inmate's sentence, but may consider the sentencing transcript if the sheet is ambiguous.").

AFFIRMED.¹

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

P99e/0

The South Carolina Court of Appeals

Charles Ray Carter, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001060

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas Elshoff J.

H. B. Joo J.

Paul W. Thomas J.

Columbia, South Carolina

cc: Charles Ray Carter, #246054
Daniel John Crooks, III, Esquire
Christina Catoe Bigelow, Esquire
The Honorable Deborah Brooks Durden

FILED

SF 1/28/16

The South Carolina Court of Appeals

Charles Ray Carter, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001060

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

<u>Thomas Eliff</u>	J.
<u>H B Joo</u>	J.
<u>Paul Thomas</u>	J.

Columbia, South Carolina

cc: Charles Ray Carter, #246054
Daniel John Crooks, III, Esquire
Christina Catoe Bigelow, Esquire
The Honorable Deborah Brooks Durden

FILED
SF 1/28/16

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

Case No. 13-ALJ-04-0705-AP

Charles Ray Carter, # 246054,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

October 20, 2014

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

Daniel J. Crooks III
Staff Attorney
Office of General Counsel
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P.O. Box 21787
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(803) 896-1355

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM RESPONDENT'S FINAL AGENCY DECISION, WHERE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION?

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Charles Ray Carter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Appellant filed a Step One Grievance on October 14, 2012, alleging that his max out date was incorrectly calculated due to a clerical error on the original sentencing sheet; this grievance was investigated and denied. (R.p. 8). Appellant filed a Step Two Grievance on January 7, 2013 alleging that he was “denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of [his] sentence without [him] knowing or without a hearing more than 10 months after [he] was sentenced” (R.p. 9). Respondent, through Division Director Jannita C. Gaston, denied Appellant’s Step Two Grievance on August 23, 2013, and Appellant received Respondent’s final decision on or about September 16, 2013. (Id.).

On October 7, 2013, Appellant filed a notice of appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R.p. 10). In an order dated May 1, 2014, Administrative Law Judge Deborah Brooks Durden issued a comprehensive order affirming Respondent’s final agency action and denying Appellant’s appeal. (Id.).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, Respondent respectfully requests that this Court affirm the ALC’s decision.

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Charles Ray Carter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Appellant filed a Step One Grievance on October 14, 2012, alleging that his max out date was incorrectly calculated due to a clerical error on the original sentencing sheet; this grievance was investigated and denied. (R.p. 8). Appellant filed a Step Two Grievance on January 7, 2013 alleging that he was “denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of [his] sentence without [him] knowing or without a hearing more than 10 months after [he] was sentenced” (R.p. 9). Respondent, through Division Director Jannita C. Gaston, denied Appellant’s Step Two Grievance on August 23, 2013, and Appellant received Respondent’s final decision on or about September 16, 2013. (Id.).

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STATEMENT OF THE CASE

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Appellant now seeks review of the ALC’s decision. For the reasons that follow, Respondent respectfully requests that this Court affirm the ALC’s decision.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See S.C. Code Ann. § 1-23-380(5).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision is supported by substantial evidence, this Court need only find, considering the record as a whole, evidence upon which reasonable minds could rely in reaching the same decision that the ALC reached. DuRant v. S.C. Dep't of Health & Environ. Control, 361 S.C. 416, 420, 604 S.E.2d

704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.

Id.

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED RESPONDENT'S FINAL AGENCY DECISION BECAUSE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION.

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, our supreme court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's en banc decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), our supreme court held that the ALC's jurisdiction was limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127.

Here, Appellant appeals Respondent's final agency action regarding a request to recalculate Appellant's sentence. (R.p. 9). On December 10, 1997, the Honorable John C. Hayes III sentenced Appellant to thirty years for violating S.C. Code Ann. § 44-53-0375(B), offense code 0114 ("Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine - 3rd or

sub. offense”). (R.p. 4). On the sentencing sheet, however, the York County Clerk of Court’s office wrote in the incorrect CDR code of 0102,¹ although next to the incorrect code is a description of the actual offense with which Appellant was convicted (verbatim from the sentencing sheet: “Poss crack cocaine WID”). (Id.). At the time this incident took place (that is, the late 1990s), it was common practice for Respondent to rely exclusively on the CDR codes for purposes of inputting an inmate’s sentence into the computer system, and Court Administration instructed Respondent to go by the CDR codes only. (R.p. 7). In 2013, with subsequent developments in this Court’s and our supreme court’s case law, new rules have emerged regarding the procedure inmates can follow to challenge the recalculation of or change to the sentence entered upon their entry to the Department of Corrections. (R.p. 12). However, these rules did not exist in 1998. (Id.).

Therefore, upon his entry into Respondent’s custody, Appellant’s sentence was entered under the incorrect CDR code of 0102 instead of 0114. (Id.). Sometime in early 1998, Appellant—not Respondent—took the initiative to contact the York County Clerk of Court to inquire about a then-existing detainer. (R.p. 11). In his letter, Appellant acknowledged that his conviction was for “poss of crack with intent to distribute.” (Id.). However, Appellant also stated that he was not sentenced “for maufacturing [sic] a control [sic] substance.”² (Id.).

¹ The old CDR 0102 code was for S.C. Code Ann. 44-53-0375(A) (“Drugs/Possession of less than one gram of ice, crank, or crack cocaine - 3rd or sub. offense”).

² Appellant is correct that he was not sentenced for manufacturing a drug. However, the language in S.C. Code Ann. § 44-53-0375(B) includes any “person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver . . . cocaine base . . .” Id.

On October 13, 1998, Respondent's Offender Records Office received a letter in reply to Appellant's letter. (R.p. 6). The letter was from York County Deputy Clerk of Court, Peggy C. Carroll, who wrote:

I HAVE BEEN REQUESTED BY AN INMATE, CHARLES RAY CARTER, TO PROVIDE YOU WITH COPIES OF HIS SENTENCE SHEET FOR A CONVICTION ON 12/20/97 INDICATING HIS CONVICTION WAS FOR POSS. CRACK COCAINE WITH INTENT TO DIST. 3RD OFFENSE AND NOT MFG. CONTROL SUBSTANCE AS HE INDICATED IN HIS LETTER.

(Id.). As a result of the clarification of the clerical error made on the sentencing sheet, Respondent updated its records to reflect the proper sentence. (R.p. 7). This Court should be aware that the true bill returned against Appellant by the York County grand jury on May 22, 1997 was for "Possession of Crack Cocaine with Intent to Distribute," which falls under CDR code 0114 based on § 44-53-0375(B)—not CDR code 0102, which is for possession of less than one gram of ice, crank, or crack cocaine and is based on § 44-53-0375(A). (R.p. 12). Therefore, the actual crime with which Appellant was charged, and of which he was ultimately convicted, was a third offense of possession of crack cocaine with intent to distribute. (Id.). The York County Deputy Clerk's letter simply verified that fact. (Id.).

This Court addressed a similar issue in State v. Bennett, 375 S.C. 165, 650 S.E.2d 490 (Ct. App. 2007). In Bennett, the appellant (referred to as "Bennett" to avoid confusion with Mr. Carter, "Appellant" in this current case) challenged his original sentence length and argued that because he was convicted as a first offender, he was not required to participate in a Community Supervision Program. 375 S.C. at 166, 650 S.E.2d at 491. Bennett argued that his sentence should have been calculated based upon the statutory provision listed both on

the arrest warrant and the indictment, rather than the CDR codes. In Bennett's case, his arrest warrant and the indictment listed that he was charged with distribution of crack cocaine in violation of S.C. Code Ann. § 44-53-375(B)(1), which read in relevant part: "(B) A person who manufactures, distributes, dispenses . . . ice, crank or crack cocaine, in violation of Section 44-53-370, is guilty of a felony and, upon conviction: (1) for a first offense must be sentenced to a term of imprisonment of not more than fifteen years . . ." (emphasis in original). 375 S.C. at 167, 650 S.E.2d at 491-92. Moreover, "the arrest warrant ~~list[ed]~~ the Criminal Docket Report (CDR) Code, or Offense Code, #0112." 375 S.C. at 167, 650 S.E.2d at 492. At that time, CDR Code 0112 indicated a first offense for "Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine." Id.

However, the indictment cover listed a different CDR code, i.e. CDR Code 0107, which indicated a Class E felony for "Drugs/Distribute, sell purchase, etc., drug other than crack cocaine . . . near school." Id. The inclusion of the correct statutory section but incorrect CDR code was the first of two clerical errors that were present in the Bennett case. The second clerical error occurred on the sentencing sheet, which "incidate[d] that he pled to and was convicted of "Distribution of Crack Cocaine in violation of § 44-53-375(B)(1) of the S.C. Code of Laws . . ." Id. On the sentencing sheet, notwithstanding the correct statutory provision, CDR Code 0113 appears. At that time, CDR Code 0113 indicated a second offense for "Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine." Id. Finally, there was no extant record of the original sentencing hearing. 375 S.C. at 168, 650 S.E.2d at 492.

In its opinion, the Bennett court explained the history behind CDR codes in South Carolina:

Essential to a determination on Bennett's claim is an understanding of CDR codes and how they are utilized in the overall judicial process. CDR codes are four digit numerical codes which represent the criminal offenses created by the South Carolina General Assembly and common law. The codes were developed in the late 1970's in a collaborative effort between the South Carolina Justice Department (SCJD), DPPP, and SCDOC. They were created at a time when computer systems had limited memory and did not have the capacity to maintain references to specific statutes which could contain many digits. The shorter CDR codes saved computer space and provided a consistent administrative shortcut to be used by all three departments. The code developers started with a list of statutory criminal offenses and assigned each a number. As laws change and new offenses are created, the codes are updated. The master list of CDR codes is now maintained by the SCJD which monitors the legislative process to determine required changes and corrects errors in the codes.

375 S.C. at 172-73, 650 S.E.2d at 494-95 (internal citations omitted). The court continued by emphasizing that, "[w]hile the [CDR] codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law." 375 S.C. at 173, 650 S.E.2d at 495. Instead, "the elements of a crime, its penalties and other related matters are governed by the Code of Laws and the common law alone[, and that] [a]ny errors in a CDR code do not affect the crime, [or] its characterization as violent or non-violent . . ." Id. Citing the South Carolina Judicial Department's website, the court underscored that "[t]he South Carolina Code of Laws is the controlling authority for classifications, definition and penalties for criminal offenses, and **the statute itself should always be consulted.**" Id. (citing S.C. Jud. Dep't, CDR Codes Frequently Asked Questions, [<http://www.judicial.state.sc.us/cdr/>]) (emphasis in original). Finally, the court ended its

discussion of CDR codes vs. statutory codes with this sentence: "Because the South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, a statute listed on a sentencing sheet, and not a CDR code, will dictate a criminal's sentence." Id.

In the case at bar, Respondent's updating of Appellant's record to reflect the proper sentence did not implicate due process concerns, and the ALC properly affirmed Respondent's final agency decision based on the existence of substantial evidence and the absence of any clearly erroneous, arbitrary, or capricious decision, or a decision that resulted from an abuse of discretion. That court correctly noted that the facts presented in this case do not implicate Tant v. S.C. Dep't of Corr., 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011), aff'd as modified 408 S.C. 334, 759 S.E.2d 398 (2014), or subsequent cases. (R.p. 12) (noting that "there is no ambiguity whatsoever as to the sentence imposed on the sentencing sheet in this case"). The ALC also noted that "the nature of the crime for possession with intent to distribute, the grand jury's true bill, and all other documentation in this case supports SCDC's 1998 correction of Appellant's CDR code for purposes of recalculating his sentence in accordance with the sentencing court's order." (Id.). The court concluded by stating that Appellant had failed to carry his burden of proving that Respondent's final agency decision was "clearly erroneous, or arbitrary or capricious, or an abuse of discretion." (R.p. 13).

Appellant has failed to show that any of the factors contained in § 1-23-610(B) are present in this case such that reversal by this Court is warranted. The arguments in this case were briefed and thoroughly addressed by the ALC, and the ALC's final order in this case

comports with the applicable statutes and case law governing judicial review of sentence calculation grievance appeals from inmates. Thus, Respondent respectfully requests that the Court affirm the ALC's decision.

CONCLUSION

For the foregoing reasons, this Court should affirm the ALC's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

Daniel J. Crooks III
Staff Attorney
Office of General Counsel
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221
(803) 896-1355

Attorney for Respondent

Columbia, South Carolina

October 20, 2014

Exhibit #16



Page 12
of 12

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charles Ray Carter, #246054,

Docket No. 13-ALJ-04-0772-AP
Grievance No. RCI 0856-12

Appellant,

vs.

ORDER

South Carolina Department of Corrections,

Respondent.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Charles Ray Carter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant filed a Step 1 grievance on October 4, 2012 alleging that his max out date was incorrectly calculated due to a clerical error on the original sentencing sheet. This grievance was investigated and denied. Appellant then filed a Step 2 grievance on January 7, 2013 alleging that he was "denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of [his] sentence without [him] knowing or without a hearing more than 10 months after [he] was sentenced...." This grievance was investigated by Division Director Jannita C. Gaston and denied on August 23, 2013. The Appellant received the Department's final decision on or about September 16, 2013. On October 7, 2013, the Appellant filed this appeal with the Court.

In his Notice of Appeal, Appellant claims that SCDC has not properly calculated his sentence and that SCDC is holding him past his release date. Appellant requests that SCDC release him immediately "because his original release date has passed."

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Administrative Law Court's jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated

FILED

MAY 01 2014

his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 756. Consequently, the review in these inmate grievance cases is limited to the record presented. An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(A)(6) (1986 & Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law. See S.C. Code Ann. § 1-23-380(A)(6); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998). Here, Appellant appeals SCDC's final agency action regarding a request to recalculate Appellant's sentence; therefore, this Court has jurisdiction to hear the appeal.

DISCUSSION

On December 10, 1997, the Honorable John C. Hayes III sentenced Appellant to thirty years for violating S.C. Code Ann. § 44-53-0375(B), offense code 0114 ("Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine - 3rd or sub. offense"). On the sentencing sheet, however, the York County Clerk of Court's office wrote in the incorrect CDR code of 0102¹, although next to the incorrect code is a description of the actual offense for which Appellant was convicted "Poss: crack cocaine WID").

Upon his entry into SCDC custody, Appellant's sentence was entered under the incorrect CDR code of 0102 instead of 0114. Sometime in the early 1998, Appellant took the initiative to contact the York County Clerk of Court to inquire about a then-existing detainer. In his letter, Appellant acknowledged that his conviction was for "poss of crack with intent to distribute." However, Appellant also stated that he was not sentenced "for manufacturing [sic] a control [sic] substance." Appellant is correct that he was not sentenced for *manufacturing* a drug. However, the

¹ The old CDR 0102 code was for S.C. Code Ann. 44-53-0375(A) ("Drugs/Possession of less than one gram of ice, crank, or crack cocaine - 3rd or sub. offense").

language in S.C. Code Ann. § 44-53-0375(B) includes any "person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or *possesses with intent to distribute, dispense, or deliver...cocaine base....*"

On October 13, 1998, SCDC's Offender Records Office received a letter in reply to Appellant's letter. The letter was from York County Deputy Clerk of Court, Peggy C. Carroll, who wrote:

I have been requested by an inmate, Charles Ray Carter, to provide you with copies of his sentence sheet for a conviction on 12/20/97 indicating his conviction was for Poss. Crack Cocaine with Intent to Dist. 3rd Offense and not Mfg. Control Substance as he indicated in his letter.

As a result of the clarification of the clerical error made on the sentencing sheet, SCDC updated its records to reflect the proper sentence. The true bill returned against Appellant by the York County grand jury on May 22, 1997 was for "Possession of Crack Cocaine with Intent to Distribute," which falls under CDR code 0114 based on § 44-53-0375(B)—Not CDR code 0102, which is for possession of less than one gram of ice, crank, or crack cocaine and is based on § 44-53-0375(A). Therefore, the actual crime with which Appellant was charged, and of which he was ultimately convicted, was a third offense of possession of crack cocaine with intent to distribute.

Appellant cites Tant v. S.C. Dept. of Corrections, 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011) addressing ambiguity in sentencing sheets. In Tant the Court of Appeals held that

Under ordinary circumstances, SCDC must determine the sentence imposed by the trial court from the sentencing sheets. If there is some ambiguity in the sentencing sheets, SCDC may examine the transcript of record to determine the intent of the sentencing judge.... In this case, there is no ambiguity. Therefore, SCDC was limited to interpreting the sentencing sheets.

Tant 395 S.C. at 449. (internal citations omitted). The only exception noted by the Tant court to this general rule is where the trial judge announced one sentence in the presence of the defendant and later increased that sentence in the written order. See Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010). Because there is no ambiguity whatsoever as to the sentence imposed on the sentencing sheet in this case, the application of Tant requires that the thirty-year sentence unambiguously imposed on the sentencing sheet controls. Moreover, the nature of the crime for possession with intent to distribute, the grand jury's true bill, and all other documentation in this case

supports SCDC's 1998 correction of Appellant's CDR code for purposes of recalculating his sentence in accordance with the sentencing court's order.

The record conclusively establishes that the "substantial evidence on the whole record" supports SCDC's final agency decision. Appellant has the burden of proving that SCDC's decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Pub. Svc. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the Department is **AFFIRMED** and the appeal of the Appellant is **DENIED**.

AND IT IS SO ORDERED.

Deborah Brooks Durden
Deborah Brooks Durden
Administrative Law Judge

May 1, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).
This 1st day of May 2014
By: R. E. [Signature]
Judicial Law Clerk

ARREST WARRANT

E- 455557

CERTIFIED TRUE COPY YORK

STATE OF SOUTH CAROLINA

County/ Municipality of YORK

AFFIDAVIT

G. P. WILLIAMS

Personally appeared before me the affiant G. P. WILLIAMS who being duly sworn deposes and says that defendant CHARLES RAY CARTER within this county and state on 04-01-97 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) in the following particulars:

THE STATE against

CHARLES RAY CARTER

Address: 4411 GIVENS ROAD

ROCK HILL, S. C. 29730

Phone: 327-5438 SSN: 248-98-2577

Sex: M Race: B Height: 71" Weight: 245

Date: S.C. DL #: _____

DOB: 12-03-55 Agency ORI #: 0460000

Prosecuting Agency: YCSO

Prosecuting Officer: WILLIAMS, G. P.

Offense: POSSESSION OF CRACK WITH INTENT TO DISTRIBUTE-4TH Offense Code: _____

Code/Ordinance Sec. 44-53-375(B)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of _____

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant CHARLES RAY CARTER on 4-1-97

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

TICKET # 30773

DESCRIPTION OF OFFENSE: POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE-4TH OFF. SECTION 44-53-375(B)
I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
ON 04-01-97 OFFICERS WITH THE YORK COUNTY SHERIFF'S OFFICE WERE CONDUCTING AN INVESTIGATION ON I-77 IN FORT MILL, S. C. DURING THIS INVESTIGATION, OFFICERS STOPPED A 1982 CADILLAC FOR IMPROPER TAG. DURING THIS STOP, THE DEFENDANT (CHARLES RAY CARTER) WAS FOUND TO BE IN POSSESSION OF NUMEROUS ROCKS OF CRACK COCAINE, THIS BEING CONSISTENT WITH THE DISTRIBUTION OF CRACK COCAINE. A CHECK OF CARTER'S CRIMINAL HISTORY SHOWED THAT HE HAS THREE PREVIOUS DRUG CONVICTIONS MAKING THIS HIS FOURTH OFFENSE. THIS OFFENSE OCCURRED IN YORK COUNTY, S. C. ALL AGAINST THE PEACE AND DIGNITY OF THIS STATE AND THE LAWS SO MADE AND PROVIDED. THE QUANTITY OF CRACK WAS MORE THAN ONE GRAM.

Sworn to and subscribed before me on 04-01-97
Signature of Issuing Judge _____ (L.S.)

Signature of Affiant _____
Affiant's Address 1675-2A YORK HWY YORK, S. C. 29745
Affiant's Telephone 628-3069

STATE OF SOUTH CAROLINA

County/ Municipality of YORK

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on 04-01-97 defendant CHARLES RAY CARTER did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE SECTION 44-53-375 (B)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge _____ (L.S.)
Judge Code: 814

Judge's Address 1675 YORK HWY. YORK, S. C. 29745
Judge's Telephone 628-3095

issuing Court: Magistrate Municipal Circuit

Exhibit 1 # Page 13 0102

379

Donna G. ...
JAN 19 1997
YORK COUNTY, SC
C.O.C.P. & G.S.

FILED-RECEIVED
BOOK PAGE
APR 4 10 28 AM '97
DAVID HAMILTON
C.O.C.P. & G.S.
YORK COUNTY, SC

Page 14 - index Exhibit #2
DOCKET NO. # 97-GS-46-1609

WITNESSES

YCS / WILLIAMS

S. Bickland

.mac

ARREST WARRANT NO E-455557

[Stamp]

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury Date:

Shane Nichols 052297

VERDICT

Guilty

G. P. Hask 12/10/97
Foreman of Petit Jury Date:

The State of South Carolina

COUNTY OF YORK

COURT OF GENERAL SESSIONS

MAY 22ND, TERM 1997

THE STATE

vs.

CHARLES RAY CARTER

Indictment for
UNLAWFUL DRUGS

POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE

SC CODE 44-53-375
CDR Code 0112

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Charles Ray Carter

hereby appear in my own proper person and plead guilty to the within indictment or to

Possession of Crack, 3rd⁺

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Sandra Harbrough
Jan 19 2 19 PM '97
Deputy Clerk
YORK COUNTY S.C.

INDICTMENT

At a Court of General Sessions, convened on May 22nd, 1997, the Grand Jury of York County present upon their oath:

POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE

That Charles Ray Carter did in York County on or about April 1, 1997, possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such Possession with Intent to Distribute not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Julia D. Mumma
ASSISTANT SOLICITOR

COUNT

COUNTY OF YORK

CASE NO: 97 GS-46-1609

378

THE STATE VS

Charles Ray Carter

CERTIFIED TRUE COPY

Donna Harbrough, Sec'y Clerk, DANIEL HAMILTON, C.C. CLERK

WARRANT NO: E 455557

CHARGE: #0102 Poss Crack Cocaine, W.L.

The sentence of the Court is that Charles Ray Carter, the defendant named in this indictment be confined to the State Board of Corrections/York County Detention Center for a term of Thirty (30) YEARS (AND) 0 pay a fine of \$: provided that upon the service of payment of \$ plus (pay) (waive) cost and assessments as applicable *, the balance suspended and the defendant is placed on probation for (months) (years).

RESTITUTION: (YES) (NO)

PHYSICAL INJURY \$

HEARING HELD OR WAIVED ON:

(and) (or)

PAYABLE TO CLERK FOR (VICTIM)

PROPERTY DAMAGE \$ TOTAL \$

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE:

DATE: 12-10-97

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE \$ ACADEMY \$150.00 C.C.A. \$ L.C.F. \$ C.A.T. \$ OTHER \$ GRAND TOTAL \$120.00

John Haza, Presiding Judge, Daniel Hamilton, Clerk of Court, Date of Birth 12-03-55, Social Security 248-98-2577, Driver's License: N/A

COPY RECEIVED BY: Charles Ray Carter, Defendant

ATTORNEY FOR DEF: ADDRESS: 4411 Givens Rd, Rock Hill, SC 29730

M F B/W

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THE COURT: MR. CARTER, IS THERE ANYTHING YOU WANT TO SAY?

MR. CARTER: I JUST ASK FOR LENIENCY. I JUST HOPE I'LL SEE MY MAMA ALIVE AGAIN; SHE'S A VERY SICK LADY.

THE COURT: WELL, I REGRET THAT, BUT YOU'VE GOT A REAL HEAVY RECORD. THE SENTENCE OF THE COURT IS FOR THIRTY YEARS IMPRISONMENT.

NOW, I TOLD YOU EARLIER THAT I WOULD TELL YOU ABOUT APPEAL. YOU HAVE 10 DAYS, IF YOU WISH, FROM TODAY'S DATE TO FILE WHAT'S CALLED A NOTICE OF INTENT TO APPEAL. BUT YOU HAVE TO FILE IT WITHIN 10 DAYS OR YOU LOSE YOUR RIGHT TO APPEAL.

MR. CARTER: WHERE WOULD I OBTAIN THE MATERIAL TO DO THAT.

THE COURT: WELL, THERE'S NO FORM OTHER THAN WHAT'S IN THE RULE BOOK. I'LL HAVE MY LAW CLERK RUN YOU A COPY OF THE NOTICE OF APPEAL -- WHAT I'LL DO, THERE'S AN APPENDIX OF FORMS TO RULES OF COURT, AND I WILL HAVE XEROXED FOR YOU ALL OF THESE FORMS, HAVE THEM COPIED, EVERY ONE OF THEM. SOME DON'T APPLY -- WELL, I WILL UP THROUGH FORM 12 BECAUSE THEN YOU GET INTO BRIEFS. YES, UP THROUGH FORM 12 I WILL HAVE MY LAW CLERK MAKE YOU COPIES. IT SHOULD BE ADDRESSES -- I CAN'T VERIFY IT BECAUSE I HAVEN'T GONE OVER THEM, BUT THERE WILL BE FORMS THAT YOU CAN USE THAT SHOULD HAVE THE ADDRESSES THAT YOU WOULD WANT.

CERTIFIED TRUE COPY
 STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
 COUNTY OF YORK VERDICT FORM

Thomas Yorkland
 Jan 19 1998
County Clerk
 DAVID HAMILTON
 C.C.P. & C.S.
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA
 v.
 Charles Ray Carter
 DEFENDANT.
 POSSESSION OF CRACK COCAINE WITH
 INTENT TO DISTRIBUTE
 97-GS-46-1609

X We find the Defendant Guilty of Possession of Crack Cocaine With Intent to Distribute.

_____ We find the Defendant Guilty of the Lesser Included Offense of Possession of Crack Cocaine.

_____ We find the Defendant Not Guilty.

Gregory Harbin
 Foreperson

December 10, 1997

~~W A N I L L # 6~~

~~[REDACTED]~~

DMT13300

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

page 18

384

01/27/98

SCDC ID: 00246054
ARTER, CHARLES RAY

SMITHKIN
LOC: MCCORMICK

OFFENDER CATEGORY: NON-VIOLENT
CURR SENT SERVING CAT: NON-VIOLENT

TOTAL SENTENCE ...: 030-00-000
CURRENT SENTENCE ...: 030-00-000

CONSECUTIVE SENTENCE ...: N
CURRENT SENT START DATE: 12/09/1997

PROJECTED COMPLETION DATES
MAXOUT DATE ...: 10/07/2013
FULL TIME ...: 11/14/2027
GOOD TIME ...: 12/24/2015
INITIAL PAROLE DATE: 01/05/2004

OFFENDER TYPE ...: ADULT-STRAIGHT SENTENCE
CURRENT EWC ...: 3 F 5
CURRENT EEC ...: NOT CURRENTLY EARNING EEC
REST CTR COMPLETION DATE: 00/00/0000
NEXT PAROLE HEARING DATE: 01/05/2004

TOTAL GT DAYS EARNED ...: 000020
TOTAL EARNED WORK CREDITS ...: 000003
TOTAL EDUCATION CREDITS ...: 000000
TOTAL EXTRA EARNED CREDITS ...: 000
TOTAL SERVICE TIME EARNED ...: 000050

LABOR CREW/WORK PROG DATE: 99/99/9999
LABOR CREW DISQ REASON:
OUTSTANDING DETAINER

Exhibit # 6

PFKEYS: 5: HISTORY OF DATE CHANGES

I was sentenced in 12-10-97

This is what was given to me at
McCormick CI by The ICC when
I started my sentence.

9/16/04

Reference Committee order
and Detainer.

Exhibit # 7

Exhibit # 7 Page 19

Dear Clerk page 19

S.C.D.C Records Branch is showing that I was sentence for Manufacturing a Control Substance which is incorrect. On December 10-1997, I was sentence by Judge Hayes for Poss of Crack with Intent to Distribute. Please send a copy of original Indictment and Commitment to S.C.D.C Offenders Records Office. Please provide me with a copy of your Correspondance in this matter. I would also appreciate it very much if you would inform as to why a Detainer is still pending against me after I have Filed a Timely notice for Speedy Trial or Dismissal. Please advise me of the proper and necessary procedure to resolve the issue that I have addressed in the Above.

Respect Fully Submitted

Charles Ray Carter
RT 2 Box 100-F4-A-292
MC cormick SC 29898

Copies York County Clerks Office

Judge Darden S.C. Supreme Court 12/14

There is nothing in this letter about 3rd offense as the Clerk stated in her response or requesting such in format.

Charles Carter

STATE OF SOUTH CAROLINA

COUNTY OF YORK

page 20

COUNT NO. _____

CASE NO: 97 GS-46-1609

THE STATE
VS

EXHIBIT 8

WARRANT NO: E 455557

CHARGE: ~~POSS~~ Poss Crack Cocaine, W/P
(0114) 3RD OFF

Charles Ray Carter

The sentence of the Court is that Charles Ray Carter, the defendant named in this indictment be confined to the State Board of Corrections/York County Detention Center for a term of Thirty (30) YEARS (AND) (OR) pay a fine of \$ _____ : provided that upon the service of _____ (and)(or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (YES) (NO)

PHYSICAL INJURY \$ _____

HEARING HELD OR WAIVED ON: _____

(and) (or)

PAYABLE TO CLERK FOR (VICTIM) _____

PROPERTY DAMAGE \$ _____
TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

DATE: 12-10-97

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE	\$ _____
ACADEMY <i>su</i>	\$ 100.00
C.C.A.	\$ _____
L.C.F.	\$ _____
C.A.T.	\$ _____
OTHER	\$ _____
GRAND TOTAL	\$ 100.00

John Hays

Presiding Judge

David Hamilton

Clerk of Court

Date of Birth 12-03-55

Social Security 248-98-2577

Driver's License: N/A

COPY RECEIVED BY: *X Charles Ray Carter*
Defendant

ATTORNEY FOR DEF: *Pro Se*
ADDRESS: 441 Givens Rd
Rock Hill, SC 29730

M F
B / W

WHITE - Clerk

PINK - Detention

YELLOW - Probation Dept.

BLUE - Defendant's Copy

Modified Dates

Exhibit # 9

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REPORT 1 CONTINUED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 246054

NAME: CARTER, CHARLES RAY

***** NO CONSECUTIVE STRUCTURE *****

** COMMITMENT TEXT **

PER JAIL TIME SHEET FROM YORK CO., SC DET. CTR. SHOWS DATE ADMITTED FOR JAIL TIME PURPOSES IS 12/09/97 THRU 12/10/97-DATE OF SENTENCE. RUDY, B.R. R&E CTR. 12/17/97. RECORD AUDITED 12/29/97. S. WILLIS///CORRECTED OFFENSE DATE ON CT#1. YORK CO. C LERK'S OFFICE FAXED A COPY OF THE SENTENCING SHEET WHICH SHOWS A STAT-UTE CODE C F (0114). STATUTE CODE WAS VERIFIED BY SALLY IN THE YORK CO. SOLICITOR'S OFFICE. 05/21/98 DRP///OFFENSE #1 MODIFIED CDR CODE FROM 0102 TO 0114 PER M. STOBBER'S DOCUMENTATION FILED IN RECORD 10/16/98-LCUSAAC, 8/22/01...



Exhibit #10

STATE OF SOUTH CAROLIN)
)
 COUNTY OF RICHLAND)
)
 Charles Ray Carter, #246054)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department)
 of Corrections,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 07-CP-40-6038

AFFIDAVIT OF MICHAEL J. STOBBE

RICHLAND COUNTY
 FILED
 2008 MAR -5 PM 4:02
 BARBARA A. SCOTT
 C.C.C. & G.S.

PERSONALLY APPEARED before me, Michael J. Stobbe, who first being duly sworn deposes and avers the following:

1. I am currently employed by the State of South Carolina and the South Carolina Department of Corrections (SCDC) and hold the position of Branch Chief of Document Processing and Release Section in the Division of Classification and Inmate Records. I have been employed with SCDC in my current capacity since 1996. I have been with SCDC since 1977.

2. In my position, I am responsible for receiving and organizing documentation regarding each inmate within SCDC for central filing, and for ensuring that such documentation satisfies the Department's requirements.

3. In 1997, inmate Charles Ray Carter, #246054, was convicted of possession of crack cocaine with intent to distribute, 3rd offense and sentenced to thirty (30) years in prison. See attached Sentencing Orders with accompanying Indictments.

4. SCDC received Inmate Carter on December 16, 1997, along with the necessary and appropriate information to process him into the Department. Such information, which was

present on the Sentencing Orders and Indictments presented to the Department, included specifically:

- inmate's name
- sentencing jurisdiction/county
- indictment numbers
- offenses
- length of sentence
- CDR code relating to sentence
- sentencing judge's name/signature
- sentencing date

5. Upon his arrival at SCDC, Inmate Carter's sentencing sheet indicated a charge of possession of crack cocaine with intent to distribute and a sentence of thirty (30) years, but listed the CDR code as 0102. At that time, CDR code 0102 indicated a charge of possession of less than one gram of ice, crank, or crack cocaine, third or subsequent offense. Because the incorrect CDR code was used, the Plaintiff's records originally reflected a projected release date of January 13, 2016, and a date for an initial parole hearing of June 7, 2005.

6. I then received a correction of the CDR code for Inmate Carter from the York County Clerk of Court dated May 21, 1998. This corrected code was again verified by a letter dated October 13, 1998. This correspondence indicated that the correct CDR code was 0114, which at the time was the code for distribution of crack cocaine, third or subsequent offense.

7. After verifying that the new CDR for Inmate Carter code was in fact the correct code, the SCDC records were adjusted to reflect the corrected CDR code. Following this correction, the Plaintiff's records reflected a projected release date of June 3, 2023, and that the Plaintiff is not eligible for parole.

8. A letter from Judge John C. Hayes, III dated September 10, 2004, further attested that the correct CDR code for Inmate Carter's offense is 0114.

9. At all times mentioned in the Complaint, I acted within the scope of my employment as an employee of the State of South Carolina and the SCDC and within the rules, regulations, laws and policies of the SCDC.


10. At all times mentioned in the Complaint in the above captioned action, I exercised the discretion necessary to carry out my duties as an employee of the SCDC and as Branch Chief of Document Processing and Release Section in the Division of Classification and Inmate Records.

12. At no time did I knowingly violate or observe another violate any of Inmate Carter's constitutional rights.

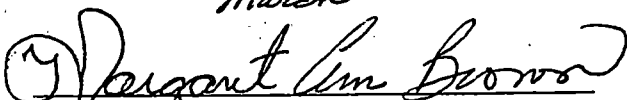
13. I followed all SCDC policies and procedures, as well as all state and federal laws and regulations in my actions involving Inmate Carter.

14. I hereby certify and attest that the documents made Exhibits hereto are true and complete copies of the original SCDC documents.

FURTHER THE AFFIANT SAYETH NOT.


Michael J. Stobbe

SWORN to before me this
5th day of ~~February~~, 2008.
March


Notary Public for South Carolina

My Commission Expires: 7/6/09

CERTIFIED TRUE COPY

Oct 22 9 04 AM '98

DAVID L. ...
CLERK ...
YORK COUNTY, SC

GENERAL SESSIONS DOCKET REPORT FOR YORK COUNTY

REPORT RUN DATE - 121197

1 INDICTMENT NUMBER: 97ES4601609

2 DEFENDANT NAME: CARTER, CHARLES RAY AKA:

3 ADDRESS: 4411 GIVENS ROAD CITY: ROCK HILL STATE: SC ZIP: 29730

4 SOCIAL SECURITY NUMBER: 248982577 SEX: 1 MALE RACE: 2 BLACK

5 DATE OF BIRTH: 120355 DRIVERS LICENSE STATE / NO.: SC / 99999999

6 MARITAL STATUS:

7 WARRANT OR TICKET NUMBER: E435557 COUNTS: 01 OFFENSE CODE: 0102

8 NO WARRANT? 0 NAME OF OFFENSE: DRUGS/POSS (1GM

9 DATE OF ARREST: 040197 DATE RECD BY CLERK: 040497 SUMMARY JUDGE:

10 DISP DATE: 121097 DISP TYPE: 2 TRIAL/GUILTY

11 DISP TYPE EXPLANATION:

12 JUDGE CODE/NAME: 049 HAYES, JOHN C III COURT REPORTER: JANET FISCHER

13 CONVICTION: CTS: 01 OFFENSE: 0102 DRUGS/POSS (1GM

14 SENTENCE:
30 YEARS

DEFENSE ATTORNEY: WILLIAM BRAY PROSECUTING ATTORNEY: JULIA MIMMS

Page 23
EXHIBIT # 11

Exhibit # 125

Exhibit # 24



INMATE RECORDS OFFICE

2004 SEP 15 AM 10:36

State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1H YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7434
TELEPHONE: (803) 628-3047
FAX: (803) 628-3055
E-MAIL: jhayesj@sccourts.org

12
September 10, 2004

Mr. Charles Ray Carter, #246054
BRCI - 122 - Murray Unit
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Carter:

I have checked the Criminal Docket Report (CDR) and it appears to me that the correct CDR code for the offense for which you were sentenced is 0114 rather than 0102. It would appear that your sentence sheet has been corrected rather than the sentence modified.

I have no jurisdiction as to your 1997 sentence at this time.

With kind regards, I am

Yours very truly,

John C. Hayes III
John C. Hayes, III

JCHIII/fjk

Cc: Court file (w/Carter letter of 8-5-04 letter and attachments)
S.C. Dept. of Corrections

Exhibit #13

Page 29 13

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Charles Carter
SCDC NUMBER: 246054
INSTITUTION: Ridge Land C.I.
HOUSING UNIT: SIA 28
WORK ASSIGNMENT: None

Office Use Only
Grievance No. RCI 0856-12
Code: General CL/CL
Policy _____
Disc. Hear. _____
Class. _____
Date Received 10/11/12
IGC Initials MB

OCT 08 2012
A.O.

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was sentenced in December 1997. My Sentencing Sheet reflected code 102. My initial Release date screen stated that my Parole Eligible Date was 1-5-04 and my Max out Date was 10-7-2013. I still have this document. However in 1998 my Sentencing sheet was modified by Records Clerk Michael SDBE by changing the code from 102 to 114 which then terminated my Parole eligibility and increased my sentence by 10 years. In a recent Ruling by the SC Court of Appeals in the case of TANT VS SCDC - The Court Ruled that SCDC could not modify a sentencing sheet that was without ambiguity. There fore with the Earn work credits and Good Time that I would have earned my sentence is suppose to be expired.

ACTION REQUESTED: That my original Sentencing sheet code of 102 be reinstated and that my EWCs and Good Time be given to me retroactively and applied to my sentence.
EWC and Good Time

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I have Exhausted these procedures before this new Ruling was put into place. There fore I'm filing this grievance base on the Ruling in TANT VS SCDC that was not available when I file in the past.

Charles Carter 10-4-2012
Grievant Signature Date

ACTION TAKEN BY IGC:

Your grievance has been investigated and because of time restraints, forwarded to the Warden for his review/decision. See Warden's decision

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

M. L. Montford 11/16/12
IGC Signature Date
N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

CARTER, CHARLES - 246054

This is in response to RCI-0856-12. All pertinent information has been reviewed and all procedures were followed appropriately. According to your Classification Case Worker, Ms. Chisholm, your CDR code was modified from 0102 to 0114 per a sentencing sheet received from Your County Clerk of Court Office. It is a mandatory 85% sentence requiring you to serve 25 years 6 months. If you feel this is incorrect, you need to contact York County Clerk of Court. With your work credits and good time, your max out date is 06/03/2023. You are currently serving 25 years 5 months 24 days. Your time can not drop below the 85% requirement.

Based on this information, I consider this matter resolved. If not satisfied with my response, see Step 5 below.

Revered Cole 12/7/12
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

M. E. [Signature] 1/3/13
IGC Signature Date

Charles Carter 1-3-13
Grievant Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

XUC: 7/8/13

EXHIBIT # 20
206 Exhibit # 14 STEP 2 page 26
INMATE NAME: Charles A Carter
SCDC NUMBER: 24605
INSTITUTION: Ridgehand C.I.
HOUSING UNIT: S.A. 28
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. RCL-0856-12
Code: General C/C
Policy _____
Disc. Hear. _____
Class. _____
Date Received 7/11/13
IGC Initials MJC

RECEIVED

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The agency overstepped its bounds I was denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of my sentence without me knowing or without a hearing more than 10 months after I was sentenced which unlawfully terminated my initial parole eligibility of 1-5-04 and my original maxout date of October 2013 by changing the offense code on my initial sentencing sheet from 102 to 114 as well as the CDR code on my indictment from 112 to 114 and entering the code 114 into the computer which created a different indictment and statute that terminated my earn work credits and good time which increased my sentence by 10 years and my maxout date to 2023 that was done outside the original record in violation of *Fain vs SCDC-718* and *Hawkins vs Freeman 166 Fed 2d 267* that has caused me to be held past my release date
Charles Carter 7-7-13
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concerns have been reviewed. Your sentencing sheet was corrected to reflect CDR code 0114 rather than 0102. You received correspondence from the Honorable Judge John C. Hayes III dated 9/10/04 which explained to you that your sentencing sheet had been corrected, not modified, to reflect the correct CDR code of 0114. The South Carolina Department of Corrections does not have the authority to modify your sentencing sheet or CDR code.

Therefore, your requested action is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

J. Gaston 8-23-13
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Charles Carter 9-16-13
Grievant Signature Date

M. E. Montfort 9-16-13
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Charles Ray Carter 246054
Ridgeland CT SA-28
P.O. Box 2039
Ridgeland SC 29936



UNITED STATES POSTAGE
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02 1M \$ 02.74⁰
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SC Court of Appeals

SC Court of Appeals

The Honorable Jenny Abbott Fitchings

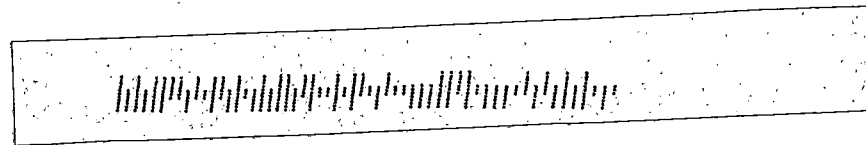
P.O. Box 11629

COLA SC 29211

RIDGELAND CORRECTIONAL
INSTITUTION

FEB 25 2016

MAILROOM



THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

RIIDGELAND
S.C. DEPARTMENT OF CORRECTIONS

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CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
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RIIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



9 X 12

