

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From The S.C. Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

RECEIVED

Appellate Case No. 2016-001274

JUL 22 2016

SC Court of Appeals

Jose Alberto Maldonado #312648, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Initial Brief of Appellant

Subscribed, This 19 Day of July, 2016.

Rule 208 (a,1); & 267 SCACR.

Respectfully Submitted,

Jose Alberto Maldonado
s. Jose Alberto Maldonado
Jose Alberto Maldonado, #312648
Kershaw Corr. Inst. MB/Room, #59
4848 Goldmine Highway
Kershaw, S.C. 29067

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STATEMENT OF ISSUES ON APPEAL

Citing:

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Issues B: The Administrative Law Court Erred In Granting Respondent is Motion To File Out Of Timen, While Denying Appellant's Motion To Resolve Appeal Adversely Without Holding A Hearing.

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STATEMENT OF THE CASE

Appellant sent a "Classification Kiosk Massage" On Nov.16, 2014, Appellant Resquested a hearing, pursuant to "SCDC Policy OP-21.09 ¶(2)," with the "Classification to review information" regarding his sentence(s) to his belief that the "Sentencing Sheets, Indictments and Commitment Order(s)" have been Miscalculated by the SCDC in his "Max-Out". See at: January 4, 2016 a Respondent's Record consiting of Inmate Grievance "KRCI 1415-14 in the above refernce case." upon "ALC S. Phillip Lenski judge see the (Appx. B(1 - 2)), the Respondent failed to submittted the same Appellat's Records to the ALC. The Appellant's Grievance's to appeal the "Kiosk Inf., stated that: (YOU HAVE 20 YEARS SENTENCE FOR TRAFFICKING IN CRACK COCAINE/and did no adressed that 'Trafficking Methamphetamines and Conspiracy for second offence From June 26, 2005.'"). the Max - Out time' and/or the Informa-tion which would "void his sentence and incarceration altogeter and this 'Kiosk Requested' was not properly addressed." ("Kiosk No.: 14-338547). Date Received on December 8, 2014.") See: the Full Appendix B. Pages 1-of-17, Record on Appeal). Therefore, Respondent used the Appellant his own records against him. The only evidence Respondent submitted to the Court's Inmate Reque-st date Dec. 19, 2014 14:32 See (Appx. B(6)), Record on Appeal. within Appx. B(1-2)). Record on Appeal

Appellant filed his ("Step 1, Grievance on: Dec. 11, 2014,

reiterating his issues but the Warden only address the miscalculation of the sentence and not the substance of our true issue. Therefore, Appellant filed his (Step 2 Grievance) on: Jan. 1, 2015 and again Appellant's true issues were ignored and Appellant then, filed his "NOTICE of Appeal" with the ALC on Oct. 19, 2015. The ALC issued a "Order" denying Appellant's "Motion for Discovery on Dec. 6, 2016. See (Appx. B(18-19 (ROP)). Appellant filed a "Writ of mandamus" to the "South Carolina Court of Appeals" to compel the "Court to Order Respondent to submit and provide Appellant with the "Original Request documents," which are still being denied to Appellant." And should "have been part of the ALC Record" on Appeal." The Court would not file the Mandamus, therefore, Appellant Requested it to be dismiss, as it was on Feb. 10, 2016. And Remitted the case on February 29, 2016. No.; 2016-000055. See: (Appx.iii-iv, and Appx. C(1, & 2). The Appellant sent a "MOTION TO WITHDRAW WRIT OF MANDAMUS" On January 25, 2016. Because the Court of Appeal Addressed a short "ten(10) days deadline, to file Notice of Appeal, and a filing "Fee of \$ 100.00 must accompany the Notice of Appeal. See: ("Appx. iii-iv. Record on Appeal") see, also (Appx. A(6 thru 14). Record on Appeal.)

Appellant filed a Motion for Summary Judgment with the ALC on April 1, 2016 which was later construed as a Motion To Resolve Appeal adversely. On May 2, 2016 the "Respondent finally" filed its Brief with a Motion To File out of Time. on 5/16/2016 Appellant filed an Response to the DOC Motion and a Reply Brief. on May 20, 2016, the ALC DENIED Appellant's Motion Granted the Respondent's Motion and affirmed the SCDC dicision.

ISSUE A: ARGUMENT

Issue A: Appellant was Denied His Procedure Due Process Right To A Meaningful Appeal of The South Carolina Department of Correction's Decision.

In Appellant's "Step One Grievance," he alleged that pursuant to Tant v. South Carolina Dep't of Corrections, 395 S.C. 446, 718 S.E. 2d (753) his Trafficking In Crack Cocaine charges have not been correctly calculated within the concurrent sentencing scheme." He further requested an "Update Hearing with Classification to examine the Sentencing Sheets, Indictments, and the Commitment Order(s) and other documents relevant to the SCDC's Jurisdiction, and lawful incarceration of Appellant. Appellant further alleged that without the correct documents, then, the sentence miscalculation would be come irrelevant because without the original and valid documentation as required by law, S.C.D.C. would not possess the necessary requisites to lawfully hold Appellant to his incarceration. ^{Fn.1} Thus, he is alleging that unless the SCDC "can produce true copies of the original Court documents," then Appellant's incarceration within the SCDC is invalid. These are

Fn.1: Appellant was challenging the accuracy of the information possess by the S.C.D.C due to his recent discovery that all of the Court Documents in his criminal case could very well be fraudulent, there by making the S.C.D.C. Documents fraudulent as well, which would void Appellant's incarceration.

Appellant's real issues as started off with his (Kiosk, No 14-338547.) This is where the procedural problem begins.

The SCDC has responded incorrectly to the sentencing miscalculation, but more importantly, has totally ignored our the remaining issue relating to the "Update Hearing" to see whether SCDC Possess copies of the correct and authentic Commitment Papers to lawfully hold Appellant incarcerated. See: (Appendix(s) B, & C.)

Appellant reiterated both issues in his (Step 2 Grievance) and had the same result. Then, Appellant filed his "Notice To Appeal" to the ALC". Since the filing of Appellant's "Notice of Appeal" in the 'ALC' Appellant has reiterated all of his issues and purposely drawn all the attention he possibly could to the fact that the Respondent (SCDC) address our sentence miscalculation, but failed to address our issue of whether the SCDC possess the "valid documents" to keep Appellant lawfully incarcerated. See: (Appx. B(1, 2, & B(6))). Irrelevant information in this Court?

Appellant filed not only a "Brief" in this matter but a "Motion For Leave To Conduct Discovery" in order to perfect the Issues on Appeal, but this Motion was denied by the ALC. Then, Appellant made Motion To Resolve Appeal Adversely, an Objection To the Respondent's "Motion To File Out Of Time." The ALC judge couldn't help but to see the Entire Issues being presented before him. However, he too refused to elaborate on the fact hearing or "True Copies of the Documents as Request." If fact, the

"ALC Judge's "Order incorrectly stated that" its decision was made after the Department's submission of the Record on Appeal. Without the Document necessary to resolve all issues before the ALC, Then the Department had not submitted the Record on Appeal sufficient for a fair and meaningful appeal. See: (Appx. "B"): Record on Appeal.

Furthermore, in the "ALC's Order" it stated:

"Assuming, that the Department correctly applied time serve and Fn.2- running the sentence from August 6, 2005, See: (Appx. "A") Record on Appeal.

"ALC ORDER's Pg. 4. at (Fn.4, & 5). Issued date May 20, 2016, the earliest a possible date by which the Appellant could be release on August 2, 2022." Here, the Court has assumed a matter of fact and law which stads as an "abuse of discretion" because a tribunal cannot assume the law. See Kiawah Property Owners Group v. Public Service Com'n of South Carolina, 338 S.C. 92, 525 S.E.2d 863 (S ..C 1999) (An administrative body must make fondings which are significantly detailed to enable Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings). Assuming law and facts will never suffice.

Fn. 2: See, (Fn. 4. within the ALC's Order), stronly suggest that the case law is in support of Appellant allegation of the (S.C.D.C.) is sentence miscalculation. See, (ALC Order, Page 4-of-5) at: (Fn. 4.).

Not only did the ALC Judge make an "error of law" in assuming law and fact in reaching his ruling against Appellant, it was also improper for the Court to reach its decision without the Respondent supplying the Court with a full "Record on Appeal" as proviosly argued. See: ante at (Page 4), (Appx.B 1-of-17): Records on Appeal. The Respondent Submitted same Appellant files to the ALC?

The "ALC granted the Department's Motion To File Out Of Time" and allowed them to submit their "Brief addressing only" the sentencing calculation issue and still avoiding our remaining preserved issue of whether the Department possess the correct and legal commitment documents to have the Appellant lawfully incarcerated in the first instance. It is obvious here that the Department nor the ALC had any concern in addressing our issues as presented from day of our "Request on Kiosk" throughout his ("Step 1, and Step 2 grievance and reargueding several documents presented to the ALC for review.") The ALC obviously considered only what was presented by the "SCDC" in its Brief which was filed sentence calculation was correct without full record on appeal or considering our pleadings at all. The persons legally responsible for an administrative agency's must be informed and unbiaused, must hear the case, and must infact make the decision, Garris v. Governing Bd. of South Carolina Reinssuranced Facility, 333 S.C. 432, 511 S.E. 2d 48 (S.C. 1998). Review of Agency's actions, the court's task is to review consideration on which Agency relied, and to check that Agency's decision

has some basis in record. "Overruling on other grounds by Kevin L. Fowler, 222318, v. South Carolina Dep't of Corrections No.: 14-ALJ-04-0355-AP (ALC S. Phillip Lenski, ORDER" on: August 28, 2014)); Based on the foregoing follows:

The ALC'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 ALC's appellate 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 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. See: (App. "C" Pgs. 1-of-36) Record on Appeal.

See: Fort Sumter Tours, Inc. v. Babbitt, 66 F,3d 1324 cert. denied. 116 S.Ct. 1848 (C.A. 4 S.C. 1995). Here, this could not happen when the court assumes and the Department failed to present the entire and necessary "Record On Appeal" to the ALC ("ALC") the ALC Judge review of this case? Was confined to evidence contained in an inadequate administrative record. Evidence of bad faith or improper behavior by administrative agency' "official in compiling that record justifies inquiry beyond record. See Kevin L Fowler, No: 14-ALJ-04-0355-AL (quoting

Al-Shabazz 3380, 527 S.E.2d 756. "Consequently, the review in these case is limited to the record presented." An "Administra-

tive Law Judge not substitute his judgment for that on an agency 'as to the weight of the evidence on questions of fact.'"

S.C. Code Ann. § 1-23-380(5). S.C.DHEC v. Atlantic Steel Industries, Inc., 85 F.Supp. 2d 596 (D.S.C. 1999). The ALC did not require the SCDC to compile a complete and adequate record for Appellant or the court in review of the Department's and Appellant's would be evidence. See Id.

Under both, State and Federal Due Process clause, no person shall be deprived of life, liberty, or property without due process of law. U.S. Const Amend. XIV, § 1; S.C. Const. Art. I, § 3. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." State v. Binnarr, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012). Appellant has not received an opportunity to be heard in a meaningful way. The interpretation of an unclear sentence must be made by a judicial officer and not by executive agency, not by assuming the Department's calculations to be correct. Tant v. South Carolina Dep't of corrections, 408 S.C. 334, 759, S.E.2d 398 (S.C. 2014); Law v. South Carolina Dep't of Corrections 368 S.C. 436, 629 S.E.2d 642 at 648 (2005). See the: (Appendix(s) "B, & C."). Record on Appeal.

Wherefore, the case should be remanded back to the ALC with an evidentiary hearing held?

Issue B: The Administrative Law Court Erred In Granting Respondent's Motion To File Out Of Time, While Denying Appellant's Motion To Resolve Appeal Adversely Without Holding A Hearing.

As stated in the ALC's ORDER, "on April 1, 2016, Appellant filed a "MOTION FOR SUMMARY JUDGMENT" with a "SUPPORTING AFFIDAVIT" and additional document." Appellant argued in this Motion that the Respondent was "Out Of Time" and failed to make any response to his pleadings. Appellant's Motion was construed as a Motion To Resolve Appeal Adversely because the "ALC" declared that this was not a "contested case" and the South Carolian Rules of Civil Procedure would not Apply. On May 2, 2016, Department filed the Respondent's "Brief" and a Motion To File Out Of Time. The Department claimed that Appellant's filing in the Court of Appeals was reason for confusion and the later "Brief".

The ALC issued an "Order Denying Appellant's Motion For Discovery on December 18, 2015. On January 6, 2016 to the court of Appeals, Appellant filed a 'Writ Of Mandamus'" to compel Respondent to provide Appellant with Copies of the "Original Documents and Commitment Order(s)." That are still being denied from Appellant and the "Record on Appeal" for the "ALC Appeal." There is no way the Respondent or "Court of Appeals" could have "misconstrued a 'Writ Of Mandamus'" for an "Initial Brief" as stated by the Respondent in their 'Motion To File Out Of Time.'

In their Motion, the Respondent has simply and intentionally mistated the issues at bar and there bogus reason for not concerning themselves with the "Rule or Law" in this case. Respondent manipulated a situation where they will not provided documents as required by their own "Policy". See: Policy Op-21. 09 ¶[2, 7. 3.6], as facts to excuse them for not doing what the required them to do. Respondent had ample notice and time to meet their obligation, but has ignored Appellant's many pleadings and has prejudiced Appellant from fully developing his issues. The so-called confussion stemmed from Respondent's initial act of preventing Appellant to his "record" (Documents) for his view and a complete and adecuate "Record on Appeal." (Ignorance of the law is never an excuse), no matter how recent, obscure, or opaque the "rule or statute." Harper v. Virginia Dep't Of Taxacion, 509 U.S 86, 97, 113 S.Ct. [2510] (1993). It has long been recognized that ignorance does not excuse lack of compliance with law. Federal Corp. Inc. V. Merrill, 332 U.S. 380, [384, 385], 68 S.Ct. 1, 92 L.Ed. 10 (1947).

Respondent never objected or argued against the Appellant's pleadings and Motions and they have been answering and responding to Inmate ALC appeals for many, many years and any confusion could have been easily resolved by contacting the Appellant and court as they were not serve a "Notice Of Appeal" from the Court of Appeals "Order" dismissing the 'ALC Appeal of the "case'" The ALC judge should have denied "Respondent's Motion To

File Out of Time" and their "Brief" should not have been considered at all. End Fn. 3.

The ALC judge was required by law to grant Appellant's Motion To Resolve Appeal Adversely against the Respondent pursuant to Rule 62, SCACL' and also any confusion about any pleadings could have easily been resolved with a hearing.

The ALC judge erred here, and granted the Respondent "Motion without the facts before it to reach its decision which was an error of law. This case should be reversed, and hearing issued to resolve the matter or resolve matter in Appellant's favor. The SCDC's decision in "Inmate Grievance matter," the ALC SITS in an Appellant capacity. See: Id. at Kevin L. Fowler v. South Carolina Dep't Of Corrections, C/A#: 14-ALJ-04-0355-AP's ORDER From "S. Phillip Lenski judge" on August 28, 2014. see also Porter v. Labor Depot, 372 S.C. 560, 643 S.E.2d 96 (2007).

Fn.3:

The ALC Order's Fn.1, See (Appx.A(2). Record on Appeal) the ALC said mayn't apply the SCRCP to entertain a Motion for summary Judgment and used "Rule 68"; See Law v. SCDC, 368 S.C. 436, 629 S.E.2d 642, 648. The Court failure to resolve the Appeal adversely to the department for failure to meet prescribed time limits, Pursuant to SCALC Rule 62. Holdings, that:

The court notes that, the Appellant makes his arguments based upon an "Older version" to ALC Rules; See "INTERPRETATION OF THE CONSTITUTION" at, "Judge Book on Originalism", with the Article VI. And U.S.C.A. Const. Amend. XIV. to using "April of 2015 a new Rules went into effect that extended the filing deadline to the inmate in his Appeal? Hereby, the ALC Missint-erpreter the "deadline 'upon Appellant'" to citing the SCALC Rules 59, & 60(A). This "deadline against the Respondent in his own Motion to File Out of Time." See: (Appx. A(13, & 14("ROP")).

Issue C: The Administrative Law Court Decision was Controlled by A Clear "Error of Law."

In the Discussion within the "ALC Order" S. Phillip Lenski judge, incorrectly used the "wrong Trafficking Methamphetamines statute's subsection 44-53-375(C)(2)(b)" of the South Carolina Code in analyzing the earliest release date for Appellant to S. C. Code, Ann., § 44-53-375(C)(2)(b) for a second offense but was convicted and sentence pursuant to S.C. Code Ann., § 44-53-375(C)(5). See the "ORDER" from ALC S. Phillip Lenski judge On: May 20, 2016, at page (3-of-5) when him said that; "the Appellant was convicted of Trafficking Methamphetamins Pursuant to section 44-53-375(C)(2)(b)' of the South Carolina Code. This offence is classified as a "Class A Felony," pursuant to § 16-1-90(A), which has been argued by Appellant from the very beginning." See Inmate Grievance Form (Step 1, & 2). See: (App.C 3,& 5)

However, the onus of recalculations of sentences must be placed upon the Department of Corrections and not the inmate, and the interpretation of the unclear sentence must be made by a judicial officer and not by an executive agency.

Furthermore, in the ALC S. Phillip Lenski's "ORDER at, Fn. 4. Within it, Order suggest that the sentencing scheme involved in his analysis may be or appears to be ambiguous.

Therefore, it is obvious that the ALC S. Phillip Lenski's

"DISCUSSION" in such matter, is based on a clear error of law: Enter SUMMARY JUDGMENT against the Respondent, pursuant to Law v. South Carolina Dep't of Corrections, 368 S.C. 424, 434, 629 S.E.2d 642, at 648 (2005), has been filed on April 1, 2016, see the ALC's Docket No.: 15-ALJ04-0567-AP Grievance No.: KRCI 4415 -14 ORDER at page (1-of-5).

The, ALC judge failed at Grant "SUMMARY JUDGMENT" on all cause of actions to support Tant v. South Carolina Dep't of Corrections, 395 S.C. 447, 718 S.E.2d at 754 (2011). Overruling on other grounds by Tant, 408 S.C. 345, 347, 756 S.E.2d at, 404 (2014) Summary judgment file on April 1, 2016. Page (4, & 5); ("under ordinary circumstances, the Department of Corrections ("DOC") must determine the 'Sentencing impose' by the trial court from the ("Sentencing Sheet(s)") (DOC) may examine the "Transcript of records" to determine the intent of the sentencing judge. See id.

Under the review procedure this Honorable: "Court of Appeal" should reverse the Administrative Law Court's decision based on an "clear error of law" and no substantial evidence to support the decision. Original Blue Ribbon Taxi Cor. v. South Dep't. of Motor Vehicles, 380 S.C. 600, 670 S.E.2d 674 (S.C.App. 2008); Brownlee v. S.C.D.H.E.C., 382 S.C. 129, 676 S.E.2d 1166

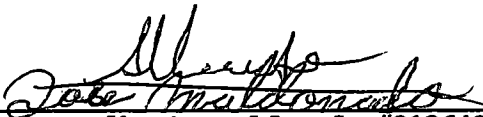
This case should be reversed and hearing should be held for recalculation of Sentence.

CONCLUSION

For the Legal Reasons and Principles Cited Within Appellant's Initial Brief, this Case Should be Remanded Back to the Administrative Law Court for a hearing with instructions for the South Carolina Department of Corrections to provide Appellant and the court with true copies of all Original Documents regarding the Appellant and his incarceration and Commitment to the Department, in Order to Resolve all issues presented by the Appellant. To avoid any further confusion in this matter, the Appeal of Court have to Ordered to the "ALC to provide a counsel with an interpreter for Appellant."

Respectfully Submitted

Done this 19 day of July, 2016.


s/ Jose Alberto Maldonado
Jose Alberto Maldonado, #312648
The Appellant.

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File: (App.Ct. Doc.2)

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JUL 22 2016

SC Court of Appeals

Appellant Case No.: 2016-001274

Certificate of Service

I, Jose A. Maldonado, a civil person presently confining at Kershaw South Carolina Correctional Institution ("SCDC"). Do hereby affirm that:

Mr. Jose A. Maldonado, 312648. Appellant Pro - Se in the above-captioned matter, hereby under oath and penalty of perjury certify, that I have served "Initial Brief of Appellant and Appendix, Record on Appeal", with "Alphabetical Order, (A, B, and C. Record on Appeal)", have being attached below this Motion. Further, the Appellant file thru the Kershaw C.I. is Mail Room; upon the below listed of address on the same dated. To:

JANNY ABBOTT KITCHINGS Clerk POST Office Box 11629 Columbia, South Carolina 29211	General Counsel David Tatarsky (SCDC) P.O. Box 21787 4444 Broad River Road Columbia S.C. 29221
--	---

Further, Appellant said and Notarized This 19 day of July, 2016. Respectfully Submitted

Jose A. Maldonado
Jose A. Maldonado #312648
Appellant Pro - Se

Sworn To and SUBSCRIBED Before Me
This 19th day of July, 2016.

Cathrine A. Amoser
Notary Public For South Carolina

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My Commission Expires: _____
My Commission Expires December 22, 2018

File: (App.Ct. Doc.2)

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July 19, 2016

JUL 22 2016

SC Court of Appeals

JANNY ABBOT KITCHINGS
Clerk
Post Office Box 11629
Columbia, South Carolina 29211


Re: Jose A. Maldonado v. South Carolina Dep't of Corrections
Institutions

Dear Clerk:

May you please present this files in the "Court of Appeals
to find enclosed a Proposed Appellant Initial Brief of Appellant";
and Appendix, Record on Appeal. In Support my Notice of Appeal.

In reference to the above - captioned criminal/or Civil
case. Please if this file meets your required/or's approval for
you, signed and return with a "Clock - Stamped" for file incide
the enclosed self - address stamped envelope.

Sincerely,


Jose Alberto Maldonado, I/D#:312648
Pro - Se
Appellant

File:(1)

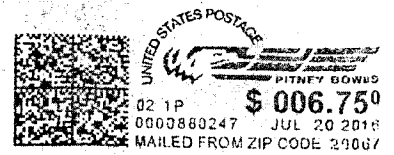
Enclosures:(2)

(ROA) Attachments:(1)(A,B, & C.)

File: (App. Ct. Doc. 2)



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