

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Administrative Law Judge S. Phillip Lenski

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SEP 06 2016  
SC Court of Appeals

ALC Case No. 15-ALJ-040567-AP  
Appellate Case No. 2016-001274

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Jose Alberto Maldonado, #312648,

Appellant,

v.

South Carolina Department of Corrections,

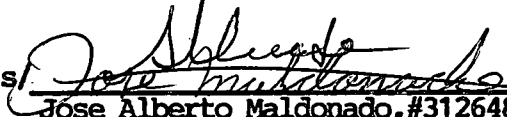
Respondent.

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APPELLANT'S REPLY BRIEF TO  
INITIAL BRIEF OF RESPONDENT

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Respectfully, Submitted

  
Jose Alberto Maldonado, #312648  
Kershaw Corr. Inst. MB/Room, # 59  
4848 Goldmine Highway  
Kershaw South Carolina 29067

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STATEMENT OF ISSUES ON APPEAL

THE ADMINISTRATIVE LAW COURT IMPROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT REQUESTED TO DISCLOSE THE RECORDS AND RESPONDENT FAILED TO SHOW THE RECORDS ON APPEAL WOULD BE CORRECT?

APPELLANT PURSUING THAT THE DEPARTMENT'S CALCULATION OF SENTENCE'S CORRECT PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS § 44-53-375(C)(2)(b) (Supp. 2005). AND § 17-19-100; OP-21.09. S.C. Dep't of Corrections Policy.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the Appeal of Jose Alberto Maldonado, an Inmate in the custody of South Carolina Department of Corrections. On December 11, 2014, Appellant submitted a Step One Grievance complaining about to demanded "a hearing for compelled the (two) consecutively sentences." The Step 1, Grievance complaining was denied without any proof to the Records, pursuant to the [Policy Op-21.09][2]]: INMATE RECORDS PLAN AND ACTIVATING INMATE RECORDS PLAN/MATTER OF INSUFFICIENT AND CONSTRUCTION OF SENTENCES IMPOSED' this mean is the "SCDC" have authority to Appellant to be incustody? With the "Arrest Warrants, Sentenced Sheets" ["True Bill Indictments"]; either no Kershaw Ct. and the General Counsel's Office "possessing such commitment orders inside of SCDC." When all files copies had to came true the General Sessions Court Term."

On January 9, 2015, Appellant submitted a Step 2, Grievance form, which was also denied on the ground that "There were no errors". Appellant's statements is to disclosed, pursuant of the Step One, and this appeal due process's to pursue the records with the "Policy Op-21.09" Appellant argued his inmate records "Office in the 'Devision of the Clasification and Inmate Records is Responsible for Administering a Uniform Process for Activating Records on Inmate admitted into the SCDC.'" See: Step Two full statement; the Reception and Evaluation has the primary duty to received process and enter "Sentencing Documentation for all inmate received into the SCDC." See: the

Policy ¶[2.4, & 5]; the ("R-&-E Center can accept an inmate into custody, without any proof upon the inmate's received an a valid commitment orders" and Appellant affirmed that there's a errors pursuant to S.C. Code of Laws § 44-53-375(C)(5), 17-19-100, see both Grievance is due process in this matter where the Appellant have been sentenced with a wrong statute: Instead S.C. Code Ann. § 44-53-(375(C)(2)(b) that described his sentences have a wrong conviction to consecutive offences).

Then, Appellant filed a Notice of Appeal in the Administrative Law Court on October 19, 2015. During the pendency of the appeal in the Administrative Law Court, Appellant filed a summons, "Notice of Intent to File Writ of Mandamus, and Writ of Mandamus" to the South Carolina Court of Appeals, which was dismissed on February 10, 2016 and remitted on Feb. 29, 2016.

Thereafter, the appeal in the Administrative Law Court went forward, and on May 20, 2016, the Honorable S. Phillip Lenski issued an incorrect order affirming the decision of the Dep't of Corrections. That, the appeal stated as follows.

## STANDAR OF REVIEW

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

Enter the standard of review against 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 right of the Applicant 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 erroneously 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review whether the ALC's findings are supported by substantive evidence. S.C.Code Ann. § 1-23-610 (B). (See Order, page 3) Filed May 20, 2016. The Appellant has been committed to the Department to serve "Multiple concurrent sentences." The longest sentence the Appellant is currently serving is twenty (20) years for Trafficking Methamphetamines 28-100 grams. second offence.

Appellant was sentence on April 10, 2007. However, the Department has credited the Appellant with time serve prior to sentencing,

creating a sentence "start date" of August 6, 2005. The earliest date by which the Appellant could potentially be released is determined by the rules of "no parole" offences. The Appellant was "convicted of Trafficking Methamphetamines pursuant to Section 44-53-375(C)(2)(b) on the South Carolina Code." There is no evidence in the hold records in the indictments against the "Appellant with this Section." Neither, the General Session Court Term, thru the attorney general's office, possessing the indictments with this facts. That ALC judge Order said that? When's no evidence to any indictment with such information. Instead S.C.Code of Laws §§ 44-53-375(C)(2)(b), 1-23-610(B). "Substantive Evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion incorrect at the ALC's judge Order' to the administrative agency reached: "INITIAL BRIEF OF APPELLANT, and DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL". See Law v. South Carolina Dep't of Corrections, 368 S.C. 436, 629 S.E.2d 642, 648 (2005) argued it in his ("Initial Brief Pages, 8, 11, and 13"); See, the Summary Judgment Appellant submitted on April 1, 2016. ("See Order May 20, 2016 P.1"). Therein is a "evidence to Appellant directly showed to the Department, that his sentences has been misplaced upon him, and there's the error. See: Id., Filed "Summary Judgment" ("a true bill of indictment is a prime facie evidence of probable cause in an action for malicious prosecution") in an action for malicious prosecution, in may decided "as a matter of law" when the evidence yields but one conclusion. See id., at:

436, 629 S.E.2d 649. The Respondent's STANDARD OF REVIEW, have no support. pursuant to Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment. See *id.* That, ALC as to findings of fact, and reverse or modify decisions that are controlled by errors of law. Because there is clearly erroneous in view of the substantial evidence on the record as "a whole. Overruling on other grounds by Law v. SCDC, 368 S.C. 629 S.E.2d at 649 (2005).

## ARGUMENTS

**THE ADMINISTRATIVE LAW COURT IMPROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT REQUESTED TO DISCLOSED THE RECORDS AND RESPONDENT FAILED TO SHOW THE RECORDS ON APPEAL WOULD BE CORRECT?**

**APPELLANT PURSUING THAT THE DEPARTMENT'S CALCULATION OF SENTENCE'S CORRECT PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS § 44-53-375(C)(2)(b) (Supp. 2005). AND § 17-19-100: OP-21.09. S.C. Dep't of Corrections Policy.**

The Appellant, Jose Alberto Maldonado, comes with this "appeal and him prays to this Honorable Court of Appeals, to schedule an Order" to compel this matter<sup>13</sup> as it relates to the disposition of his Notice of Appeal filed with this Honorable Court pursuant to South Carolina Appellate Court Rules. Rule 203 SCACR.

As an initial matter, the Appellant asked this Court to assess this pleading with the recognition that the Appellant's a foreign National with bare-minimal understanding of the English language and American culture, at the time him "has been convicted in the lower court." And thus, does not begin to comprehend even in a layman capacity things legal.

Wherefore, the Appellant begs the Court's indulgence as he presents his pro-se litigation to the very best of his ability. (See, Goodson v. Am. Bankers Ins. Co. of Florida, 295 S. C. 400, 368 S.E.2d 687 (Ct. App. 1988)(quoting Thomas J. v. Spring Valley Country Club S.E.2d 2015 WL 5047789 S.C. 2015 August 26, 2015's Fn.1)("[A] party has a duty to monitor the progress of his case. Lack of familiarity with the legal proceeding is unacceptable and the

court will not hold a layman to any lesser standard that is applied to an attorney"); see also, Hanes v. Kerner, 404 U. S. 519 (1972) et al. The Appellant hereby presents this appeal as follows:

The jurisdiction of the Administrative Law Court ("ALC") to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Kevin L. Fowler, No. 14-ALC-04-0355-AP (quoting, Al-Shabazz, 338 S.C. 527 S.E.2d 742. (See Appellant's Initial Brief, Pages 7, & 8)). "Consequently, the review in this case is limited to the record presented." An "Administrative Law Judge 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(5) S.C.DHEC v. Atlantic Steel Industries, Inc. 85 F.Supp. 2d 596 (D.S.C. 1999). The ALC didn't require the SCDC to compile a complete and adequate record for Appellant or the court in review of the Department it's an Appellant would be in evidence. See the Initial Brief of Appellant at (Pages 8, & 11).

The Respondent argument have not support pursuant to Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 128 (2003). ("See ALC's Order P.1") the Appellant argued that the Dep't of Corrections had failed to file a Brief. On May 2, 2016. On May 2, 2016, the Department filed the Respondent's Brief and a "motion to file out of time." This Court of Appeals have to ruling it pursuant to Rule 208(a)(4), SCACR. To Support Appellant's Objection to Respondent's Motion To File out of Time, Filed Motion on May 12 - 16, 2016." (See, id. Rule 62, SCALCR).

See: A Proposed Appellant Initial Brief of Appellant, file (Ct. App. Doc. 2's Pgs. 3, 8, & 11). At ISSUE A: Argument's "Step One Grievance, he alleged that pursuant to Tant v. S.C., Dep't of Corrections, 395 S.C. 446, 718 S.E.2d at [753](2011). Hereby this case Appellant show in to many ways to the Department of Corrections, and the General Counsel's Office therein is not sentence upon the Appellant. In "Trafficking in Crack Cocaine charges have not been correctly calculated within the concurrent sentencing scheme." Him after read Tant's Argument he further requested an "update hearing with Clasification to examine the Sentencing sheets, Indictments, and the Commitment Order(s) and other documents relavant to the SCDC's jurisdiction and lawful incarceration of Appellant.

When reviewing SCDC's decision in inmate grievance matters the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E. 2d at 754. (Overruling on other grounds by Tant v. S.C. Dep't of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014). The S.C. Court of Appeals sended A Order to proceed in forma pauperis and granted pursuant to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995) Appellate C/A#: 2016-001274 filed on July 28, 2016. See, Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124, at 128 (2003)(quoting Ex parte Martin, 533, 471 S.E.2d 134 (1995)(the court addressed when an inmate may proceed in forma pauperis)). See *id.* Sullivan, 437, 586 S.E.2d at, 128. ("[T]he only way for the Administrative Law Judge Division ("ALJD") to lack subject matter jurisdiction over a prisoner inmate's grievance claim is if implicat-

es a state - created liberty interest, which is protected by the Due Process Clause. U.S.C.A. Const Amend. 14.

See, McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (2005), the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credit, or "custody status"; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates state-created liberty interest. See: Tant, 334, 759 S.E.2d at 398 (2014); Sullivan, at 443, 586 S.E.2d at 128 (emphasis Supplied)).

In this case, the "Administrative Law Court" improperly affirmed the decision of the Department of Corrections. Initially, the Administrative Law Court exists to review the "actions of court judges in sentencing defendant." Accordingly, the Administrative Law Court lack subject matter jurisdiction and declined to rule upon the validity of Appellant's sentences. See ante at (Page, 6, Pursuant to S.C. Code Ann. § 1-23-380(5) see also the (File: Order p. 3 of 5. May 20 2016). Sullivan, at 437, 586 S.E.2d at 128. S.C. Const. Art. I, § 3; U.S.C.A. Const. Amend. XIV. Brief of Appellant.

Therefore, Appellant showing to the Respondent that Department of Corrections incorrectly holding Appellant in custody with respect to calc-

ulation of his sentence. As the Administrative Law Judge. Found, Appellant to confined his incarceration "without any proof" to the Department of Corrections to serve multiple concurrent sentences, see Section 44-53-375(C)(2)(b), and 17-19-100, amended sentences, provided that. Tant, 334, 759 S.E.2d at 398. This court hold that when the Department decides its original recordation of sentence was erroneous, it must afford the inmate formal notice of the amended sentence. S.C. Code of Laws § 17-19-100.

The Respondent Argument didn't cover up the (Order's P. 3, to page 5) within the S.C. Code § 24-13-100, & § 24-13-150(A).

The earliest possible date Appellant could be released from his twenty-years sentence-considering his incarceration from June 26, 2005 and start of August 6, 2005, as "ordered by the sentencing judge's null and void. (See Order at Page 3) his max-out date calculated by the Department of correction is wrong too. There is the proof upon the Order from (May 20 2016). Because, the Department have not records pursuant to the "S.C. Code Ann, § 44-53-375(C)(2)(b)" to the "indictment had/or have amended his sentences, at § 17-19-100. Appellant provided" and show that affirm the Department "holding Appellant unlawful to the South Carolina Dep't of Corrections. Therefore. Appellant, respectfully requests that the Order of the Administrative Law Judge's irrelevant; null and void to Appellant incarceration."

CONCLUSION

For the foregoing reason, the Appellant should affirm the Administrative Law Court's decision is incorrect. Because The Respondent did not provided with the Commitment Orders, to Appellant can continue his incarceration inside of South Carolina Department of Corrections. See the Respondent's DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, had not proof to holding Appellant in custody. Further, the Appellant prays to this Honorable Court of Appeals to granted, Appellant his appeal in this decision below.

Done this 31 day of August, 2016.

File:(Ct. App. Doc.4)

Respectfully Submitted

*Jose Maldonado*  
s/ Jose Maldonado  
Jose Alberto Maldonado, #312648  
Kershaw Corr. Inst. MB/Room #59  
4848 Goldmine Highway  
Kershaw South Carolina, 29067

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Administrative Law Judge S. Phillip Lenski

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SC Court of Appeals

ALC Case No. 15-ALJ-040567-AP  
Appellate Case No. 2016-001274

Jose Alberto Maldonado, #312648

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF SERVICE

Undersigned Appellant hereby certifies on today's date him mailed a copy of the Appellant's Reply Brief To Initial Brief Of Respondent to addressed as follows:

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

Christina Catoe Bigelow  
Deputy General Counsel  
P.O. Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221

Further Appellant Said And Certify

Done this 31 day of August, 2016.

Respectfully Submitted

SWORN To and SUBSCRIBED Before Me  
This 31<sup>st</sup> day of August, 2016.

Jose Alberto Maldonado  
Jose Alberto Maldonado, #312648  
Pro Se Appellant

Catherine A. Chresa  
Notary Public For South Carolina  
My Commission Expires:

Kershaw, Corr. Inst. MB/Room, #59  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

My Commission Expires December 22, 2018

File: (Ct. App. Doc. 4)

Jose Alberto Maldonado, #312648  
Kershaw Corr. Inst. MB/Room, #59  
4848 Goldmine Highway  
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August 30, 2016.

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

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RE: Jose Alberto Maldonado, #312648, v. S.C. Dep't of Corrections  
Appellate Case No. 2016-001274

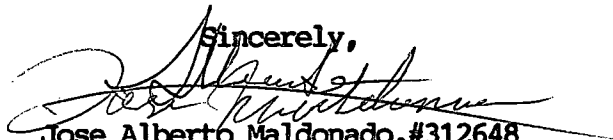
Dear Ms. Kitchings:

Enclosed please find the **Appellant's Reply Brief To Initial Brief of Respondent** in the above captioned appeal, along with Certificate of Service.

Thank you for your time to this matter, in reference to the above-captioned criminal/or civil case. With this Honorable Court, if this file meets your approval, file the original in your office's clerk and return a clock-in copy to me in the enclosed self-address envelope.

cc: Christina Catoe Bigelow  
Deputy General Counsel

P.O. Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221

Sincerely,  
  
Jose Alberto Maldonado, #312648  
Pro-Se Appellant

File: (Ct. App. Doc.4)

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SC Court of Appeals

The Honorable Jenny A. Kitchings  
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