

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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

ALC Case No, 15-ALJ-0567-AP
Appellate Case No. 2016-2016-001274

Jose Alberto Maldonado, #312648,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

FINAL BRIEF

Respectfully Submitted

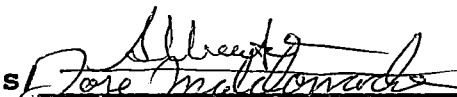

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STATEMENTS OF ISSUES ON APPEAL

Argument I.

Issue A: Appellant Was Denied His Procedural And Substantial Due Process Right To A Meaningful Appeal;

Argument II.

Issue B: Administrative Law Court Error In Granting Respondent's Motion To File Out Of Time While Denying Appellant's Motion To Resolve Appeal Adversely Without Holding A Hearing; and

Argument III.

Issue C: The Administrative Law Court Decision Was Controlled by A Clear "Error Of Law"

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 Dep't of Corrections. On December 11, 2014 Appellant submitted a Step One Grievance, "complaining about to demanded disclosed with an evidentiary hearing". To compel the (Two) "consecutively sentences", the Step One, Grievance complaining was denied without any proof to the records pursuant to SCDC's Policy: PO-21.09, ¶(2).

On January 9, 2015, Appellant submitted a Step Two Grievance form, which was also denied on the ground that there were "no errors upon the both statutes," the Appellant complaining at the both sentences. Appellant filed a Notice of Appeal in the Administrative Law Court (ALC or court), Appellant filed a Notice of Appeal filed October 20, 2015. In this Appeal, the Appellant argues the Department has lawful incarceration of prison sentence. The Department filed the same Appellant's record (IGP) on January 4, 2016. The Appellant seems to have objected to the order denying the motion and the contents of the Records on Appeal and filed a "Writ of Mandamus" with the Court of Appeals. The Court of Appeal construed the Appellant's filing as an improperly perfected appeal and eventually dismissed the (C/A# 2016-000055) The matter was remitted to this court on February 29, 2016. Thereafter, the Appeal in the ALC went forward, and May 20, 2016, The S. Philip Lenski issued an order affirming the decision of the SCDC. This Appeal follows.

STANDARD OF REVIEW/LAW ANALYSIS

S.C. Code, § 1-23-610(B): Set forth the standard of review when this Court is setting in review of a decision by the ALC on an appeal from an administrative agency. Specifically, Section 1-23-610(B) allows this Court to Reverse the ALC's decision if it violates a Constitutional or Statutory Provision or is affected by any other error of law. See Appendix: A (R.p.3 ROA)(quote, § 44-53-375(C)(2)(b) clearly the ALC's Order show that enter § 1-23-610(B)(a, d, & e)). While the interpretation of a statute by the agency's interpretation "will be accorded the most respectful consideration," an agency's interpretation "affords no basis for the perpetuation of a patently erroneous application of the statute." State v. Sweat, 286 S.C. 339, 351, 688 S.E.2d 569-75, 576 (2010).

Appellant contends that the eighty-five percent (85%) of S.C. Code §§ 24-13-100/150, does not apply to his Trafficking In Methamphetamines charges because the sole issue on review involves a question of statutory interpretation, which's a question of law subject to de novo review . Borton v. SC. Dep't of Prob. Parole & Pardon Serv., 395 S.C. 414, 745 S.E. 2d 110, 120 (2013)(See, ALC judge Order, R.p.4 at Fn.2; quoting, Bolin v. SCDC, 415 S.C. 276, 781 S.E.2d 914(Ct.App.2016)(reh'g denied Feb.24,2016)). Despite Respondent's arguments, "Appellant has merit upon the Bolin case," and it is to be held retroactive in the "ALC Order" as it has since its ruling in this case on collateral review. Therefore has not be aplicable "by ALC Order under Teague v. Lane, 489 U.S. 288 (1989) See, e.g., Jose Alberto Maldonado v. Warden of Perry CI., C/A#:8:11-cv-01372-TLW Filed Sept.27, 2011.

ARGUMENT I.

ISSUE A: Appellant Was Denied His Procedural And Substantial Due Process Right To A Meaningful Appeal.

Appellant alleged within his Step One (1), and Step Two (2) Grievances, as well as in his ALC Brief that his Trafficking in crack cocaine charges were "incorrectly calculated" by the SCDC under the concurrent sentencing scheme of the Trafficking in crack cocaine Statute," and pursuant to the New Information Recently Discovered by Appellant has lead him to believe all of the "Court Documents received by the SCDC may be fraudulent. See (ROA, p. 63; APPELLANT BRIEF/MOTION FOR LEAVE TO CONDUCT DISCOVERY ORDER): R. p. 68-line 9's Attachment: A-5), in which he show with his requested an "Update Hearing with Classification to examine the Commitment Order(s) and all other relevant documents." Without authentic legal documents, the Appellant's incarceration within the South Carolina Department of Corrections ("SCDC") would be invalid, thereby making the miscalculation of Appellant's sentence an irrelevant and moot point. See: (Attachment: A-5 ROA.R.P.84-line 6) showed that, there is no record of said charge. Discovery From State Grand Jury on April 17, 2015.

However, the point here is that the two (2) interwoven allegations and issues were preserved for review by the SCDC and the ALC judge, but the Agency and Court addressed the sentencing miscalculation issue and totally ignored our issue relating to

the "Update Hearing" and whether SCDC possess copies of the correct, authentic, and legal Court Documents to lawfully hold Appellant incarcerated. See: That Record on Appeal Appendix(s): A-through-D)(One hundred twenty five (125) pages).

The Dep't of Corrections and ALC judge ignored Appellant's real and full issues denying him his right to be heard and to receive adjudication upon his meritorious issues. U.S.C.A.Const. Amend. One, and Fourteenth.

Not only did "Appellant filed a Brief" to the ALC in this matter, but he also filed a "Motion For Leave To Conduct Discovery" in order to perfect the issues mentioned above (Issues on Appeal) see the (ROA, p. 63), but this Motion For Leave To Conduct Discovery was denied by the ALC. Then, Appellant made a "Motion To Resolve Appeal Adversely" because the Respondent failed to file their Brief within the allotted time and had not produce the full "Record on Appeal"; see Appendix:B (R. p. 27); Summary Judgment, with Affidavit at (R. p. 40. ROA) as required by the ("V. SPECIAL APPEALS, file Oct. 29, 2015, at 52. Computation of Time' see Appendix: C. R. p. 59 ROA")(Instead Section: (V) 54. Service, with Rule 5(b)(1), SCRCF, "also shall satisfy this Rule/or 62. Dismissal of Appeal; Sanctions. Of the time limits provided by this section (V), upon the Respondent's failure to provided by Rule 59(B). Stated as follows:

Notwithstanding the time frames established herein, the ALC judge has the discretion to determine that a document is timely filed upon a finding that the party who filed the document made a good faith effort to file

the document within the applicable time limits. Is a mandatory sanction upon the Respondent for purposes of delay. See Appendix: C (R. p. 61 ROA).

The Respondent filed their Brief and "Motion To File Out of Time" well after the due date for their brief. See Appendix: A (R. p. 25 ROA). Appellant objected to the Respondent's Brief and Motion being accepted by the ALC. See; at (R. p. 8 ROA). The ALC denied all of Appellant's Motions and Objection, while granted all of Respondent's Motions and ruled in their favor. See, Order at Appendix: A (R. p. 1, ROA); and Order Denying Motion For Discovery at the Appendix: C (R. p. 108 ROA). The Court allowed them to submit their "Brief addressing only" the sentencing calculation issue as they still avoided our remaining issue of whether the SCDC possess the legal documents to keep Appellant lawfully incarcerate. See, Appendix: B (R. p. 1 ROA).

Another matter to be taken up here is the ALC judge's Order. The Order "incorrectly stated that 'its decision was made after the Department's submission of the Record on Appeal.'" See, e.g., State v. Hollman, 232 S.C. 489, 500, 102 S.E.2d 873, 878 (1958). The "Record" within meaning of rule that "record" of a criminal trial must affirmative show that state grand jury was not sworn, the conviction must be reversed, means of the "Question Involved", the second suggests that Appellant was deprived of the right to, at "a Session of the State Grand Jury of South Carolina to being indicted, and therefore denied due process of

law, and other records of trial in office of clerk of trial Court, and not the "transcript of record" on appeal as agreed on by solicitor, assistant attorney general. Code 1976, §§ 1-7-100, 1-7-120, 1-7-510. Const. Art. V, §§ 22/24; and Supreme Court Rules, rule 4 and 3. See *id.*, at Hollman, 500, 120 S.E.2d at 878; (quoting State v. Self, 225 S.C. 267, 82 S.E.2d 63 (1954)). Holding: that "General Sessions Court Term", contending that there was error in the presiding judge's charge in that he failed to charge the law applicable to Trafficking Methamphetamines, and Conspiracy for "a second offense to Trafficking in cocaine, under the provision § 44-53-375(C)(2)(b). Where one is charged with the crime for consecutive offenses, and run concurrent is the intent, though there must also be some in the direction of such an intent and the SCDC agency used to effect the intent may or may not be sufficient for the purpose, see Self, 270, 82 S.E.2d at 64 (1954). See, Appendix: A (R. p. 6 ROA) Guilty Plea hearing this court said that; if I be sentenced consecutively on those indictments, I will be sentenced to "Sixty Years and a hundred thousand dollars. See (R. p. 6, line 9-17); See (R. p. 7, line 3-16) Plea? from August 22, 2006, was the sentencing transcrip, show me again under the Indictments No. 2005-GS-47-26, count 1, Trafficking Methamphetamines, 28 to a Hundred Grams, second offense; and count 4, trafficking."" Applied Appendix: B (R. p. 27 ROA) at, (R. pp. 34-35) Under this two cases: McKnight v. S.C. Dep't of Corrections, 385 S.C. 380, 386, 684 S.E.2d 566, 568 (2009); and Law v. S.C. Dep't of Corr. 368 S.C. at, 436, 629 S.E.2d 649 (2005). Without the Documents nece-

ssary to resolve all the issues before the ALC, then the SCDC, agency had not submitted a sufficient "Record on Appeal" for a fair and meaniful appeal. See, Appendix: B(p. 40 ROA) were the judge Lenski, file from Respondent's Record, consisting of Inn-ate Grievance KRCI 1415-14, in the above case. "Only One Copy on Record," see (R. p. 45 ROA) Appellant's "Motion for Summary Judgment had been applied, because Respondent fall bellow to the Record on January 4, 2016. And the ALC judge cannot accept such records, and the matter that belong to: "Appellant Brief/Motion For Leave To Conduct Discovery's Attachment file (A.L.C. Doc.2) on December 3, 2015. (See, R. pp 64-107 ROA)."

Furthermore, the "ALC's Order" stated: "Assuming, that the Department correctly applied time served and running the sentence from the August 6, 2005, the earliest possible date by which the Appellant could be released is August 2, 2022". Here, the Court is assuming matters of fact and law without the full "Record of Appeal" and without addressing all issues before it.

In reviewing of Agency's actions, the ALC's task was to review the considerations that the Agency relied upon in making their decision and making sure that Agency's decision has some basis in the record. Fort Sumter Tours, Inc. v. Babbitt, 66 F.3d 1324, Cert. Denied, 116 S.Ct. 1848 (C.A. 4 (SC) 1995); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980)(quoting, State v. Vanderbilt, 287 S.C. 597,

340 S.E.2d 543 (1986). The ALC could not have made a meaningful review when the Court assumes the facts and law and the Agency has failed to produce the entire and necessary "Record on Appeal" to the ALC. This case was confined to evidence of bad faith or improper behavior by the ALC's judge and Agency's Officials in compiling the incomplete and inadequate record would justify beyond the Record. SC. Ditt. E.C. v. Atlantic Steel Industries, Inc., 85 F.Supp.2d 596 (D. S.C. 1999). See, Appendix: C R. p. 98 ROA).

The ALC did not require the SCDC to compile a complete and adequate record for the Court's review of the Department's arbitrary and capricious decision made without addressing all issues before them and the assuming facts and law. This amounted to an "abuse of discretion" and "error of law". See Kiawah Property Owners Group v. Public Services Com'n of S.C., 338 S.C. 92, 525 S.E.2d 863 (S.C. 1999) (An administrative body must make findings which are significantly detailed by enable the Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings).

Under both our State and Federal Due Process Clauses, no person shall be deprived of life, liberty, or property without due process of law. U.S.C.A. Const. Amend. XIV, § 1; S.C. Const. art. 1, § 3. 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 manner. Tart, 334, 759 S.E.2d 398 (2014). This case should be remanded.

ARGUMENT II.

Issue B: 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.

Appellant filed with the ALC a "Motion For summary judgment on April 1, 2016 because Respondent failed to comply with the ALC rules and was out of time and failed to make any response to Appellant's pleadings. See, Appendix: A (R. pp. 8-26 ROA). Appellant's Motion was construed by the Cour "as a Motion To Resolve Appeal Adversely." On May 2, 2016, the Dep't filed their Respondent's Brief and Motion To File Out of Time. See: (R. pp. 19-26 ROA). Before this, Appellant had filed a Motion For Leave To Conduct Discovery, See, Appendix: C (R. p. 63 ROA) in order to perfect the Issues on Appeal and to have the Court Documents submitted to him as possessed by the SCDC (Respondent) and previously requested pursuant to SCDC Policy OP-21.09 §[2], 7, & § 3. 6. See: (R. pp. 74-77 ROA).

The ALC denied the Appellant's Motion For Leave To Conduct Discovery on Dec. 18, 2015. See, (R. pp. 108-09 ROA) on January 6, 2016 Appellant filed a Writ of Mandamus" See: (R. pp. 110-18 ROA) to the South Carolina Court of Appeals, whow for an unknown reason misconstrued this "Writ as a "Notice of Appeal" and "Initial Brief", which was not in any way indicated by Appellant's filings or otherwise that this was his intentions at all. See: Appendix: D (R. pp. 119-125 End ROA). The (SCDC) used this

circumstance as a reason for confusion to excuse them for not doing what the law required them to do. The ALC granted all of Respondent's Motions while denying appeal without requiring Respondent to comply to Appellant's Motions: See, Ante, at Issue: A, Pgs, 5-6). To Grant Respondent's Motion and deny Appellant's while affirming SCDC decision was an "error of law". Now comes this Law Analysis in Regard:

LAW ANALYSIS

Respondent had ample notice and time to meet their obligation, but has ignored Appellant's request and many pleadings, and by doing so has prejudiced Appellant from developing his record and issues and denied Appellant his right to a meaningful appeal. The so-called confusion actually stemmed from Respondent's own act of preventing Appellant access of the Court Documents for his reviewing and as a complete and adequate "Record on Appeal". The SCDC cannot "use ignorance of the law" to excuse lack of compliance with the law. Federal Group Ins. Corp. v. Merrill, 332 U.S. 380, 384-85, 68 S.Ct. 1, 92 L.Ed.2d 10 (1947).

The ALC judge should have denied Respondent's Motion to File Out Of Time and their Brief should not be considered.

The ALC judge was required by law to grant Appellant's Motion To Resolve Appeal Adversely against the Respondent under Rules, Rule 61, and 62, SCALC Section (V), or for the failure to provide a factual basis for each expressly and specifically

asserted constitutional violation as prescribed by Rule 59(B). See, Hon: Linski's Order with held at: Appendix: A (R. p.3 ROA) ("[t]he ALC judge clearly said on May 20, 2016 Order that "Appellant was convicted of Trafficking Methamphetamines pursuant to section 44-53-375(C)(2)(b)" of the South Carolina Code.") when the court applied the offense is classified as a Class A felony, pursuant to section 16-1-90(A). A Class A felony is one to which a penalty of not more than thirty years applies, as stated in section 16-1-20(A). See; Argument III. upon this Motion. Constitutional Violation against the Lenski's Order from May 20, 2016. Because Appellant had/or have not record of sentence to punish him pursuant to section 44-53-375(C)(2)(5). See, Appendix: C (R. p. 63, filed Attachments; R. pp.74-75 ROA) that Inmate Grievance One, and two explaint that; see also (R. p. 83 ROA) sentencing sheet, described § 44-53-375(C)(5) there is the error to the lowere court, and the ALC judge allow too. See (R. pp. 88-102 ROA) two indictments within diferent dates?

The Appellant Grievances pursuant to Policy Op-21-09 ¶[2]: Inmate Records Plan/Matter of Insufficient And Construction of Sentences Imposed Accordignly the SCDC have authority for Appellant's custody with copies of the "Arrest Warrants, Sentencing Sheets", and ("True Bill Indictments"), with the Court Orders. Neither Kershaw CI. or Office of general Counsel claim to posses these documents. So any confussion come to the "Respondent, or by ALC could have been resolved with a hearing. The ALC jud-

ge erred here by granting the Respondent's Motion without the facts before it to reach the decision it did was an error of law. Porter v. Labor Dep't, 372 S.C. 560, 643 S.E.2d 96 (2007).

This case should be reversed with an instruction and a hearing issued to resolve this matter or ruled in Appellant's favor.

ARGUMENT III.

Issue C: The Administrative Law Court Decision Was Controlled by A Clear "Error Of Law"

The Respondent (SCDC) has, from the very beginning, used the incorrect subsection of the Trafficking In Methamphetamines statute in analyzing and calculating Appellant's sentence and earliest release date. The ALC judge's Order stated this very same subsection in regards to the calculation of the earliest release date. See ante, in this Final Brief, at p.(3), "Standard of Review/Law Analysis." The Respondent and Court both use S.C.Code, § 44-53-375(C)(2)(b) in their calculation, when the correct subsection is S.C. Code, § 44-53-375(C)(5). Appellant was not convicted and sentence pursuant to S.C. Code § 44-53-375(C)(2)(b) for a second offence, but was convicted and sentence pursuant to § 44-53-375(C)(5) which Appellant has argued from the very beginning. See Appendix: C (R. Pp. 74-77 ROA) Step 1, & Step 2; and (R. Pp. 97-107 ROA) the Indictment(s) with Sentencing Sheets.

Furthermore, within the ALC's Order the judge estrongly suggested that the sentence scheme involved in his and the SCDC's analysis appears to be ambiguos. It is quite obvious that the ALC Order in denied is based on clear error of law. See Tant v. SCDC, 404 S.C. 334, 759 S.E.2d 398 (2014). Under the review procedures used by the ALC, this court should reverse the ALC and SCDC decision which was controlled by a clear error of law, and no substantial evidence to support the decision. Law v. South Carolina Dep't of Corrections, 368 S.C. 436, 629 S.E.2d 642-648 (2005).

This case should be reversed and a hearing should be held for recalculation of Appellant's sentence.

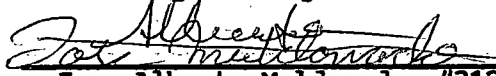
CONCLUSION

For the legal reson and principles cited within Appellant's "Initial Brief, Reply Brief, and Record on Appeal", pursued with this "Final Brief"; under the Appellate Court Rules, Rule 208(a)(4), SCACR. The Rule 211(a) SCACR, a "Final Brief," said that: Within twenty (20) days, after the service of the "Record on Appeal, 'each party'" shall serve a copy of his final brief(s) on every other party to the appeal, and file fifteen (15) copies of the final brief(s) with the Clerk of the Appellate Court . Here, the Respondent did not file in time's "Record on Appeal" with this Court,' in accordance with the rules. Rule 210(a) SCACR, provide that; within thirty (30) days after Respondent his last "Initial Brief" has to file his Records with this Court. See the Rule 211(a) SCACR, against service upon Respondent with the prescribe time. See, "Appellant's Reply Brief To Respondent Initial Brief of Respondent" at, (p. 8-line 23, argued under "Rule 208(a)(4) SCACR, same issued," failure to file his Final Brief, within twenty (20) days). So the last day Appellant received from Respondent's "Initial Brief of Respondent, and Designation of Matter To Be Included In The Record on Appeal, this Motion Enter on My Records on August 18-24, 2016."

The Respondent again, against Limitation Action, in this Appeal, with this Rule 208(a)(4) SCACR. For failure, to not raised any defence with his "Record on Appeal". And let this Court to review the SCDC, incarceration to "Jose Alberto Maldonado, Case No. 2005-GS-4726." Between, the State of South Carolina indicted him. Enter The Rule 260 SCACR, against the Respondent.

Further, a hearing should be held with a counsel, in Order to "resolve this matter without any other confusion."And also, this Hon: Court should order the SCDC to provide Appellant with the Entire and Complete Court Documents as Received by them in the 13th Judicial Circuit's Clerk, from the General Sessions Court Term files.

Respectfully Submitted


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October 11th, 2016.

File: (Ct. App. Doc. 6)