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State Of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court

Administrative Law Judge John D. McLeod

ALC Case no: 16-ALJ-04-0100-AP

Appeal No. 2016-001563

Justin Griffin #315057 . . . . . Appellant

VS

South Carolina Department of Corrections . . . . Respondent,

Appellant's Reply to Respondent's Initial Brief

S/Justin Griffin
Justin Griffin 315057
Kershaw Corr. Inst.
4848 Goldmine Hwy
Palmetto Unit-A-28
Kershaw SC 29067
Pro SE

November 22 2016

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Reply Arguement

Now comes the Appellant who humbly prostrates himself before this Honorable Court in Distress and seeking Justice, Justice as defined and mandated by South Carolina Law. This Appellant would pray this Court look beyond the stereo type of unchanging Convicted Felons who would do anything to escape the Consequences of their bad choices, even wasting the court's valuable time in hopes to skirt their dues owed to society; and instead, view this Appellant as the Rehabilitated Individual he is, and one who has paid dearly for a bad choice in Loyalty at a young age in misguided ignorance; paid with over a decade of his Life for his wrong choices and who is Now Ready to give back to his Community and benefit his society for all that he has taken away in youthful ignorance. The Respondent clearly wishes this system to Continue in it's backing of their Actions and ommissions against this LONE Man with out Regard to the Laws and statutes that govern it's Administration and with overbarance to their inability to adhere to Legislative intent where the statutes are clear and unambiguous in their provisions of sentence related credits and their applications to prisoners. The Appellant would pray this Court recognize that he is wholly subjected to the Respondent and can only provide as evidence what they're willing to provide him, and have in-deed denied him many Requests for production of documents in support of his claims and thus he is doing the best he can to show TRUTH with what limited provisions

he has obtained despite the Constant efforts of the Respondent to hinder his expression. Further, he would Like to go on record, if it please the Court, in aggitated proclamation that the Respondent Did Not provide him it's Response Brief until November 14, 2016, (a full 6 days after their filings with this Court) and Nor did they provide him with Any supporting documents submitted to the Court, and finally, did Not provide him Legal materials or access to the Law Library until November 17, 2016; which Lends Credence to the Appellant's Allegations of the Respondent's Immoral turpitude And Capricousness towards this Appellant.

I.

1. The Respondent clearly wishes this court to uphold the decision of the Administrative Agency in it's biasedness and that of Administrative Law Court Judge John D. McLeod and claim in their Brief that the standard of Review Stimulates from S.C. Code Ann. §§ 1-23-610(B) and 1-23-380(5), and is governed by Hendley V S.C. State Budget and Control bd. 325 S.C. 413 481 S.E.2d 159 (Ct. App. 1996), (see Respondent's Brief at pg. 3)

2. The Appellant Contends that, as provided in Each of these standards of Review, the order issued, and asking to be upheld by the Respondent, must be confined to the Record which in turn must be Supported by substantial evidence, Considering the Record as a whole; and the decision of the "ALC" Judge may only be Reversed or modified if " the substantive Rights of the petetioner 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;"

S.C. Code Ann. § 1-23-610(B)

Thus the standard of Review is established, the Appellant prays this court step in and institute Justice and instruction of the Law as the benefactor of authority bestowed upon by the aforementioned mandations of statute as the order of the ALC is clearly biased in that it prejudiced the Appellant from establishing burden of proof because the case was dismissed prior to the deadline provided in section V. special Appeals specifically Rules 59 and 60 wherein it provides the Appellant Ninety-five (95) days after the case is assigned to file a Reply brief or ten (10) days after the filing of the Respondent's initial brief.

3. The Respondent filed their initial brief on June 02, 2016 yet the Appellant did Not receive said brief in service until June 8, 2016 as the Respondent did Not see fit to serve the Appellant on time with it's initial filings in the ALC. (see Exhibit 4 and 5)
4 Thus shown, the Appellant mailed his Reply brief on June 17, 2016, yet Received the ALC's order of dismissal immediately thereafter, which is dated and signed by Judge McLeod on June 20, 2016. (see Exhibit 6). + (Attached form for verification of filing Appellants Reply brief)
5. Using Logic, there is No way infinitely possible that this ALC

Judge received, and much less Read the Appellant's final brief before issuing the order of dismissal which extremly prejudiced the Appellant's chance of establishing burden of proof as directed by Porter V. Public Service Comm'n 333 S.C. 12, 507 S.E.2d 328 (1998).

6. Furthermore, the Respondent has shown biasness and atypicalness from the initiation of this process and tells this Court directly that They are discriminating judiciously and discretionately against this Appellant in their brief, where-in they state "... It is undisputed that Appellant's sentence for armed Robbery is an eighty-five percent "No-parole" sentence under S.C. Code Ann. § 24-13-100... eighty-five percent inmates who recieve all possible good time credits under S.C. Code Ann § 24-13-210(b) and all possible earned work credits under S.C. Code Ann § 24-13-230(B) can be released after serving exactly eighty-five percent of their sentences. ~~However, Appellant does not fall into this Catagory of Inmates.~~" See Respondent's Brief at pg. 4).

7. This Appellant asserts adamantly that the Respondent knows and has known from the initiation of this process that they're wrong — (even admitted it to the Appellant when he confronted the issue of his earned work credits ("EWC's") and their unapplication of them to his sentence at a Review by Kershaw's Classification) in not factoring in more than 226 days of EWC's to the App-ellant's sentence and have since, went out of their way to Cover their ommission and seek some form of justification, any form, as shown by their "change of grounds" since their answers to the Appellant's Grievances and even since their submission of their Respondent's Brief to the ALC. (see Respondent's

Response Brief for ALC at page 3.) where in they Blame the Appellant's ten year disciplinary Record; not until the filing of their Initial Brief in this Court did they even bother to address the Appellant's EWC's.

8. The Appellant maintains that Not only [redacted] has the ALC and Respondent provided Reason and CAUSE for this Court to Overturn and Judicate this issue by failing to provide him with Due process and equal protection of the laws in the Lower Court in failing to allow the allotted time mandated by the special Appeals Rules 59 & 60 to expire before making a decision on behalf of the Respondent, but also by Not directing the Respondent to restore his EWC's in distinct violation of statutory provision S.C. Code Ann. § 24-13-230 (B), which in turn consequently Breaches Statute SC Code Ann. § 1-23-610 (B)-(A)-(B)(C) & (F). and the standard of Review. (see Attached form for proof of filing of Final Brief in the ALC).

9. Finally, the Appellant assents that the "findings" of the ALC ARE NOT supported by substantial evidence when Considering the Record as a whole because the evidence in particularly and in whole, sustain his claims that his sentence is miscalculated because the Respondent has failed to Adhere to the provisions of South Carolina Laws and statutory mandations As will again be Made evident in the following section:

II.

10. The Appellant is sentenced under statutory provisions

S.C. Code Ann. §§ 24-13-100; 24-13-210(B) & 24-13-230(B),
- Contrary to what the Respondent alleged in their initial brief that the "Appellant does not fall into this catagory of inmates"; for some unexplained Reason the Respondent is treating the Appellant as if he isn't entitled to the credits he has earned.

11. As shown in his Initial Brief, the Appellant maintains that as he is classified and sentenced under the Violent offender Criteria as a "No parole offense" as provided in S.C. Code Ann. § 24-13-100 he Is also provided three (3) days good time credits per month and six (6) days Work credits a month in Relation to S.C. Code Ann. §§ 24-13-210(b) & 24-13-230(B) which specifically mandates such a provision to a "Violent offender" or A perpetrator of a "No parole offense." So, in short; as long as the Appellant doesn't committ any disciplinary Infractions that month, then he earns three (3) days per month, and as long as he is assigned to a Productive duty assignment he earns six days per month Also. South Carolina Law provides this Appellant that Duty of Care owed to him by the state to ensure his credits are documented and calculated properly into his sentence, which the Respondent has failed to do, Breaching that Duty and possibly harming the Appellant irreparably if such an ommission isn't corrected. (see Exhibit 2 = i.e. = vident offender)

12. Thus established, the Respondent Is Wrong in their allegations that "the Appellant does Not fall into this Catagory"

of inmates who earn credits pursuant to S.C. Code Ann. §§ 24-13-100, 24-13-210(b) & 24-13-230(b). and is thus admittedly discriminating against him by failing to provide him equal protection of the laws.

13. The Respondent alleges that the Appellant's time is properly calculated and "justifiably" prolonged his stay in their custody because he only has (60) sixty days of Good time remaining as Consequence to his "extensive" Disciplinary Record; to this, the Appellant asks only that the Respondent provide him all of the Good conduct credits he has earned since that Calculation in April 2016 as he has been without Any disciplinary infractions for well over a year,.. and yet his maxout date hasn't moved back an inch. If he gets three (3) days a month, why then isn't it effecting his projected max-out date? Shouldn't it be backing up three (3) days every month he is free of disciplinaries until it Reaches the minimum of eighty-five percent of 13 years?

14. The Respondent perpetrates that this Appellant has only earned (226) two hundred and twenty-six days of earned work credits as they've shown in the Record (see Max-out date calculation Worksheet) and here is where the descrepency lies.

15. Using simple mathmatics the Appellant prays this court calculate his EWC's as provided by S.C. Code Ann. § 24-13-230(b) wherein it provides him (6) days a month, or seventy-two (72) days per year multiplied by the ten (10) years he has already served on SCDC (see Exhibit 2, i.e. sentence start date of 10-6-2006) equals seven hundred and twenty days earned Respectively, minus the year of service in the County Detention Center prior to his plea,

and minus another two years and a half, the Respondent made the Appellant do in Administrative Segregation from May 1, 2011 – October 17, 2013 as an Inmate does Not Receive Any credits while on Solitary; an approximate subtraction of two hundred and fifty-two (252) days from the seven-hundred and twenty days of ten (10) years of EWC's is equivalent to: (468) four hundred and sixty eight days EARNED by this Appellant as he has worked everyday (other than those stated previously) since his incarceration or went to school (which provides 85% servers with the same amount of days in credit as working).

16. Thus shown, the Appellant asks this court, as he has asked the Respondent several times as well as the Lower Court, where are his Remaining EWC's? There is No Provision in S.C. Law or even in the Respondent's own Administrative policies that allow for a confiscation or deduction of an Inmates Already earned work or Educational credits. so the Appellant's Disciplinary history cannot be brought into this Issue to Cloud the Court's vision on this matter.

17. The Respondent has shown only, through It's OWN Submission of Documents to this Court, (and the Lower Court) to have provided a Calculation of two hundred and twenty-six (226) days only, to the Appellant's maxout date. (see Maxout Date Calculation Worksheet or Exhibit no. 1). That still leaves out an approximate number of days already earned by the Appellant, (242) two hundred and fourty two days unaccounted for... Almost the exact Amount of prolonged time instituted upon the Appellant by the

[redacted] Respondent for "loss of Good Conduct Credits" which is purported to be a "Coincidence" when brought to the attention of the Respondent by the Appellant. (original Max out: October 2017, and Respondent's "New" calculation: May 2018 = approximately 210 days over 85%).

18. The Respondent told this Appellant that "they" do Not have to factor in "ALL" of the Appellant's EWC's, only what "they" Choose too, and that regardless of how many days of Credit the Appellant earns by working, good behavior, or by education it will Not affect his "New" Projected Max out date of May 2018, and that any "Excess" of days earned, both in the past and in the future, ARE irrelevant because Mr. Michael J. stobbe did Not see fit to add them into the Calculation on April 14, 2016 when he prepared the Max-out Date Calculation Worksheet in the Record. (see Affidavit of Appellant attached).

19. The Appellant would ask this Court, humbly, the difference between his armed Robbery conviction and the unjustified Robbery perpetuated by the Respondent upon his person? When Legislature provides him reward or payment for whatever intent, once earned, that provision becomes his to own, and if someone takes it from him without direct instruction by that same Legislative Body does it Not Constitute a Crime? Especially so, one would believe, when that same someone taking or stealing is the same one entrusted to govern over said provisions...

20. The Respondent [redacted] stated in their Initial Brief [redacted]

that "the Appellant has failed to Refute the Records provided by SCDC" and that the ALC judge John D. Mcleod based his decision upon those same Records; the Appellant Contends that he could Not Refute or even protest any such Records when and if he is Not given the opportunity to be heard at to file his Reply to the same ALC Judge before being bullied with his discretion and wielding of process in dismissal of the Case before allowing the Appellant his time allotted by the South Carolina Rules of Appellate Court. to actually Challenge those Records.

21. Furthermore, the Respondent has consistantly thrown about the impact of the Appellant's Disciplinary history upon his sentence and deviously Dawned off the TRUE issue therewith, yet the Appellant asserts that he has Now, still, despite his Disciplinaries, a Surplus of Good Conduct Credits as provided by S.C. Code Ann. § 24-13-210(b) and questions the authenticity of the Respondent's Claim. How can the Respondent go outside of those Credits - (If infact, what they claim about the loss of Good conduct credits affecting immediately the Appellant's duration in Custody is TRUE, as I have it upon information and belief that it most assuredly isn't.) to affect his Eighty five percent margin if infact he still has Possession of Credits? Classification here at Kershaw Correctional Institution assured the Appellant in a Review that the only way a Violent offender's maxout date would move up to prolong his Captivity is if the offender is convicted of enough Disciplinary Infractions to surrender ALL of his Good Conduct Credits

Only then, can his Court imposed eighty-five percentage of incarceration go up and prolong his captivity as the disciplinaries impinge upon his sentence directly, instead of the credited days already earned.

22. As S.C. Code Ann. § 24-13-150 mandates in part "a prisoner who is convicted of a "No Parole" offense against the state may Not be released before completing a minimum of at least, eighty-five percent of his sentence imposed; and..." No matter how many credits one earns, if he is convicted and serving for a No parole offense against the state he may Not be Released until that minimum standard is completed. (85%).

23. So, one must ask is it the Legislature's intent for one serving a "No parole offense", if having possession of an Excess amount of credits to be governed or disciplined outside the parameters established in S.C. Code Ann § 24-13-210(b) Where in it provides in part..." that if a prisoner is convicted of a disciplinary infraction while serving a No Parole offense sentence he will forfeit that month's earned good time credits." (3 days) Emphisis added.

24. The Appellant asserts that No where within the governing Provisions of title 24 or title 1 does it confer authority upon anyone, Not even the Commissioner or Director of the Agency itself, the power or permission to go around the credits earned and if still held, to affect an Inmates duration of incarceration without first forfeiture of the earned and held credits.

25. It is more likely a probability the Respondent has utilized the Appellant's Bad Behavior of the past to Cloud the Issue of Discovery in it's ommissions of miscalculation in Relation to the Appellant's EWC's and their unscrupolous attempts to

cover up their indiscretions or find some type of justification for [redacted] their discriminations and biasedness against this Appellant.

26. Lastly, the Appellant would like to bring to this court's Attention the past multipul tensions between the Respondent and this Appellant and the Respondent's hostility towards him for a civil action filed in the recent past by the Appellant against the respondent for various discriminations and violations to his Constitutional Rights that [redacted] stimulated from the Respondent's placement of the Appellant in Administrative Segregation with inhumane conditions and duration (32 ½ months) which ended in embarassment and humiliation for the Respondent as they were forced to release the Appellant from such depravity and RE-write their policy on Administrative Segregation. (civil action no: 2012-cp-42-4618) Since his release from isolation the Appellant has suffered multipul aggressions from the Respondent in vindictiveness and spite.

27. Furthermore, there are several Inmates here who are serving a No parole offense/sentence with more disciplinary infractions than the Appellant, who's Max-out projection/date has Not budged a single day. (see Affidavits attached).

Conclusion

Wherefore, upon the foregoing the Appellant prays this Court hold the Respondent accountable for It's actions and

Ommissions and find justice for the oppressed and victimized. and provide relief in your discretion to restore what was rightfully earned and then capriciously taken. This Appellant moves this Court, Respectively, to Rule on the honorable side of Mercy on behalf of the Appellant by ordering the Respondent to replace his max-out date back to it's original, court-imposed eighty-five percent projection and Revise the biased order of ALC Judge John D. Mcleod as the Record as a whole and South Carolina statute support the Appellant's grounds.

Respectfully submitted,

S/ Justin Griffin

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Pro SE

State of South Carolina }
In the Court of Appeals }

Justin Griffin #315057

Appellant;

Vs

South Carolina Department of Corrections;

Respondent;

Appellate case no.:
2016-001563

SWORN Declaration of Appellant

I swear under penalty of perjury pursuant to 28 U.S.C. § 1746 that everything contained herein is Absolute truth, relevant to this Appeal and that I am competent to give this information freely as I possess knowledge partial to this case:

In February 2016 I was ordered to Report to Kershaw Correctional's Classification offices for an Annual Review wherein I asked Mrs. Brooks and Mrs. Williams, both classification workers, Why my earned work credits were only being partially applied to my sentence or only applied in part as I found that I was missing over half of my already earned credits. Mrs. Williams stated that the other half of those credits were "irrelevant" and would not be applied to my sentence because the Calculation of my projected release had already been done for this "cycle" and she stated then that she would not go back and change it.

S/Justin Griffin
Justin Griffin #315057

November 17, 2016

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
Justin Griffin	315057	Pal - A 19	6-17-16

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
	Sub-Total:	

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage	2	
Other	¢	
	Sub-Total:	¢

(1) ALC
(2) GC

Final Brief

2 letters

Brown Bag

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount	To be completed by SCDC staff: Cost
Photocopies		
		TOTAL

Justin Griffin
Inmate's Signature

Alexander
Mailroom/Canteen Signature (Request filled by)

6/22/16
Date

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

State of South Carolina
In the Court of Appeals
Justin Griffin #315057
Appellant;
vs.
South Carolina Department of Corrections;
Respondent;

Appellate case no.:
2016-001563

Sworn Declaration of
Brian Cappitelli #278302

I swear under penalty of perjury pursuant to 28 U.S.C. § 1746 that everything contained herein is absolute truth, relevant to this Appeal and that I am competent to give this information freely as I possess knowledge partial to this case:

I am under 85% violent offender as classified by SCDC and I have been convicted of several disciplinary infractions by SCDC throughout this incarceration and in the recent past. My projected max out date has not moved from my original court imposed sentence.

November 17, 2016

s/Brian Cappitelli
Brian Cappitelli #278302

State of South Carolina

In the Court of Appeals

Appellate Case no: 2016-001563

Justin Griffin #315057 . . . . . Appellant,

vs

South Carolina Department of Corrections . . Respondent,

Certificate of Service

I certify under penalty of perjury pursuant to 28 USC § 1746 that I mailed an original Copy of the Appellant's Reply Brief and attachments to the following addresses with postage Affixed: on this 22nd day of November 2016.

Administrative Law Court
1205 pendleton st. suite 224
Columbia SC 29201

Christina Bigelow
Counsel of Respondent
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RECEIVED
NOV 30 2016
SC Court of Appeals

s/ Justin Griffin
Justin Griffin #315057