

February 17 2016

1 of 6

RE: 2017-000232

• File without Payment

Jimmy Dimeggs Jr, 277400 • motion for Appeals Bond.

TCI SA-227

1578 Clarence Coker Hwy,

Turbeville, SC 29162

**RECEIVED**

FEB 24 2017

SC Court of Appeals

SC. Court of Appeals

Hon. Jenny A. Kitchings, clerk of court

P.O. Box 11629

Columbia, SC 29211

Dear Mrs. Kitchings,

ma'am, The order enclosed stated I had (10) days from the date of the February 10 2017 letter to respond or my appeal would be dismissed. I did not receive this until Friday, February 17 2017, and by the time this letter could be sent to you my (10) days would have expired.

Secondly, as it relates to the \$100.00 filing fee, according to both SCDC and the Ruling of the ALC, there is a state created liberty in this action.

because the issue is the Department's policy and calculation of sentence related credit. Specifically, while on bond from (April 3, 2000 until August 9, 2001) I was subjected to monitored house arrest while paying \$350.00 per month there by being another person, I would have a liberty interest in the money I paid.

The state interestingly made two arguments 1) The Retroactivity argument and 2) That because the amendment state "May", The credit would be discretionary in both instances it would not be Compelling.

The Retroactivity<sup>10</sup> argument was specifically rejected by a Anderson county court in the author Fields case. Mr. Fields served his house arrest before the enactment of this bill and the state put forth this same non-retroactivity argument and the court rejected the states argument and awarded Mr. Fields this credit. The state did not appeal.

also if the court would take judicial notice that Shannon Bogen from Spartanburg County was awarded his time for time served on House arrest, and in this case he was charged/arrested in 2011, Released on House arrest until his plea in November of 2012. The law was not amended until June 7 2013, almost (7) months after the fact. Bogen Files his PCR and in 2016 the state consents and The Honorable Thomas A. Russo signs the order, clearly this was applied retroactively.

## II

as it relates to the "may" being discretionary First the Discretion would be that of the court. "May" as defined by Black's Law Dictionary "may" "In dozens of cases, courts have held may to be synonymous with shall or must, usu. in an effort to effectuate what is said to be legislative intent.

However, the appellant would contend that the issue here would be akin to that of the case Fowler and Bolin that this court has recently overturned the ALC. Decision.

Specifically In 2010 the SC legislature passed and the Governor signed the 2010 Omnibus Crime Reduction Reform act and one of the amendments stated to allow offenders with certain drug charges would be allowed to basically have or allowed to receive work credits and Goodtime that would in effect allow them to work down their sentence below the 85% benchmark. The statute amendment specifically states "May".

preceding the referenced allowances, SCDC Refused to acknowledge and calculate the credits and Fowler and Bolin filed step 1 and 2 Grievance to no avail.

Both Fowler and Bolin filed their Notice of appeal to the ALC who Ruled in Favor of the "Department". However, when these appellants filed their action in the SC, Court of appeals the appellants prevailed, and SCDC began to release the affected offenders.

I am humbly asking for the Court to allow due to the issues presented, to proceed without Requirement or waiver of the \$100.00 filing Fee.

The appellant would further motion this Court to Grant an appellant Bond, with the provision of being placed on House Arrest. Depending on the ruling of the court the appellant would have been Imprisoned beyond the term of Imprisonment as of today appellants Max out Date is 5-13-18, IF Granted the (16) months of House Arrest.

If released as of the Date of this letter/motion appellant would have spent approx (60) days beyond max-out. Specifically IF Granted this credit appellants max out would have been (1-1-17)

- Due to the evidentiary fact that appellant was on monitored House Arrest for (16) months in a neighborhood with no incidents in complete compliance, The appellant poses no harm to the community.

- Due to The evidentiary Facts discussed above and this Courts ruling in Fowler and Bolin the likelihood of prevailing is Great

- Due to the circumstances presented here Irreversibly harm will be had if not released due to the crediting of sentence related credit.

- The appellant has been employed in assisting others in obtaining their G.E.D., has not been disciplined in a major Disciplinary action during his (16) years of Incarceration.

The appellant served in the US National Guard and was a part of the 263 Delta MIA Tank Division and served in a active duty status in 1991/1992 in a operation in Iraq, and received a Honorable discharge due to a knee injury. The appellant attended Clayton University and ultimately work for CSX Railroad as an Engineer. The appellant's character is as such that would cause this court to consider allowing this appeals Bond.

The appellant would humbly ask this court to waive the \$100.00 Filing Fee, Grant an appeals Bond and allow the appellant to proceed with this appeal.

I want to thank you for your thoughtful consideration in this matter.

with kind regards, I am

sincerely, yours,  
Jimmy Messis

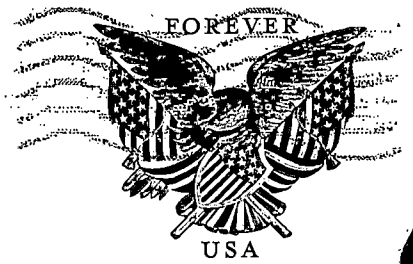
Jim

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