

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk Jr.; Administrative Law Judge

Jerome A. Owens

Appellant,

v.

South Carolina Department of Corrections

INITIAL BRIEF OF APPELLANT

Jerome A. Owens
Pro Se Appellant

Allendale Correctional Institution
Barnwell B-28
P.O. Box 1151
Fairfax, S.C. 29827

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

1. Did the Administrative Law Judge err in his Order of Dismissal that appellant had not timely provided proof of service that notice of appeal had been served on SCDC?
2. Did the Administrative Law Judge err by not addressing the constitutional violation that was before the Court Pursuant to Tant V. SCDC?

FACTS

Bamberg County Grand Jurors indicted appellant Jerome Owens in December 2003 for trafficking in crack cocaine. Appellant proceeded to trial before the Honorable Reginald I. Lloyd on January 12, 2004 and was found guilty as charged. Judge Lloyd sentenced him to twenty eight years on February 19, 2004.

Appellant was housed at Lieber Corrections a level three institution for ten and one half years. While at this prison his release date was projected at December 2026 at eighty-five percent service of such. Appellant's custody level changed to a level two and in June 2014 he was transferred to Allendale Corrections.

After a couple weeks at this institution appellant learned that his release date had changed to March 2020. Appellant questioned CDC classification worker Ms. Jamison about this change. She could not answer and appellant filed a grievance. This grievance was denied as untimely. Appellant was advised that Stephanie Willis at Inmate Records authorized the change of his sentence.

Stephanie Willis replied to the appellant in two kiosk messages saying that she made the change to appellant's sentence. And that the Judge sentenced appellant to twenty five years day for day mandatory, so instead of appellant serving a twenty eight year sentence at eighty five percent, Ms. Willis said the Court intended the appellant to serve a mandatory sentence according to the CDR code listed on the sentencing

sheet. Appellant filed a second grievance and SCDC denied this January 11, 2016.

In this denial SCDC responded that this grievance was a duplicate to ACI-0072-15 an earlier grievance. Appellant appealed the grievance that is before this Court on record to the Grievance Branch Chief January 15, 2016.

The Grievance Branch Chief then informed SCDC-Allendale Correction Classification employee's that appellant must receive a Revision of Sentencing Hearing. On June 20, 2016 two SCDC Classification employee's summoned the appellant to operations at Allendale Corrections. Mrs. Moore informed Mr. Irons on how to address this process. Ms. Moore by way of her authority as Head Classification employee hindered the appellant by limiting communication during a tape recorded interview.

After this hearing appellant filed another grievance alleging his sentence passed by Judge Lloyd on February 19, 2004 had been changed to interpret a sentence not recorded or pronounced as the final judgement by the Judge of record. SCDC denied this grievance in step 1 and step 2 and appeal followed to the Administrative Law Court. H.W. Funderburk was assigned this case October 20, 2016. On March 8, 2017 this Court this Court's judgement was an Order of Dismissal for failure of the appellant to serve SCDC with a proof of service.

And this appeal now follows the Administrative Law Court.

STATEMENT OF THE CASE

On January 6, 2016, Jerome A. Owens an inmate in the South Carolina Department of Corrections brought a Grievance against SCDC Inmate Records alleging the original sentence passed upon him had been modified without his involvement or notification - that his sentence would be modified.

SCDC responded through classification at Inmate Records by Stephanie Willis accepting responsibility of modifying the appellant's sentence. This employee determined that she was authorized in her official capacity to make a change to the structure of appellant's sentence.

Prior to this January 6, 2016 Grievance the appellant was denied due process by this department on two occasions as addressed in Grievance ACT-0072-15 (2015)

SCDC Attorney Kensey Collins of the office of General Counsel contacted the appellant and initiated review of appellants prior grievances.

This department then initiated a revision of sentence on June 6, 2016. Thereafter, the appellant again filed another grievance due to the continuing effects of the change of appellant's sentence since he found out July 2014.

ARGUMENT

The administrative law judge erred in his order of dismissal that appellant did not timely provide a proof of service on SCDC.

Appellant was given the instruction to correspond with SCDC and provide this department with the appellant's documentation. The records before the administrative law judge does show sufficient compliance of the rules by the appellant.

South Carolina Administrative Law Court Clerk of Court filed the appellant's case and docketed on October 28, 2016. Administrative Law Judge H.W. Funderburk Jr. was assigned this docketed case at that time. SCDC was also notified and served notice of Appeal. Thereafter Cheron Hess, an Administrative Assistant for SCDC corresponded with the appellant on several occasions. Furthermore Ms. Hess requested that the lower Court dismiss the appeal because there was no timely brief filed by the appellant. Appellant has always served SCDC properly and timely. SCDC mailroom insisted that inter-agency mail services will be guaranteed safely at Allendale Corrections.

From such operation it is fully known that all parties have been properly served with a proof / certificate of service in every document mailed by the appellant. Cheron Hess at SCDC does not refute this assertion at anytime. The lower Court has erred in his dismissal of the appellant's appeal on this ground.

Even after this order of dismissal SCDC continued to serve the appellant with a Motion To

Supplement the Record dated March 9, 2017. This provides a sufficient and clear regard that SCDC was in-fact properly served with proof/certificate of service. To dismiss appellant's appeal was an error pursuant to rule 59 of the SCALC

Rule 59 of the South Carolina Administrative Law Court rules readspertinent part

[Any] notice of Appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and any applicable filing fee is processed.

Accordingly, prior to Honorable H.W. Funderburk Jr. being assigned to the appellant's case. A safety valve was placed in these rules to insure that Rule 59 Notice of Appeal (SCALC) South Carolina Administrative Law Court Rule would be followed prior to his assignment. Thus, appellant's case assignment in and of-itself shows appellant's adherence - for compliance of the SCALC Rules.

The judge would not have been assigned to this case had not the appellant provided proof/certificate of service. Furthermore, had not the Appellant complied with SCALC Rule 57 as well assignment would not attach or be submitted to Judge Funderburk.

The administrative law judge has erred in his order of dismissal and his decision should be reversed, overruled, and supplemented by this Court.

The Administrative Law Judge erred by not addressing the Constitutional violation that was before the Court on Appeal.

The appellant asserts that he has been deprived of life, liberty and property without first having an opportunity to be heard and proper notice as required by our United States Constitution. . . XIV amendment and South Carolina Article 1 section 3 of the South Carolina Constitution.

In the recent case of Tant V. South Carolina Department of Corrections 408 S.C. 334, 759 S.E.2d 398 (S.C. 2014) the Supreme Court of this State addressed the troubling manner by which the Department of Corrections altered Tant's sentence without his involvement and concluded it was a denial of due process.

In Tant a standard was provided to the lower Court for inmates to obtain 'judicial review' of this particular class of cases where SEPC attempts to increase an inmates sentence.

In the Appellant's case at hand, his sentence was changed from twenty-eight years at eighty five percent of service of such to twenty five years mandatory day for day.

Prior to such change the Appellant would have served twenty three and a half years on the twenty eight year sentence for the Trafficking in Crack charge provided that trafficking is defined as violent. see S.C. Code Ann. § 16-1-60 (2004)

During the trial of appellant while being sentenced by Judge Reginald I. Lloyd (No longer serving as a judge), the Court pronounced a sentence of twenty eight years straight sentence.

Nothing else was required of the appellant. The Court sentencing sheet reflects a twenty eight year straight sentence. And without further investigation this judgement and sentence by the Court became final.

In State V. Campbell 376 S.C. 212, 656 S.E.2d 371 (2008) A trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgement was entered expires

Judge Lloyd did not contact SCDC and SCDC some 10 1/2 years later assumed a power not authorized to this Department.

Therefore any increase of any kind to his sentence outside of his presence is a violation of his due process rights to be present at every stage of trial Cf. Boan V. State 388 S.C. 272, 695 S.E.2d 850 (2010)

Again SCDC has assumed a power not authorized by any judicial authority or statutory law that authorizes this department to enforce a sentence not pronounced or written as final judgement of the trial Court. See, State V. Archie 470 S.E.2d 380 (1996) Although subject to statutory and constitutional restrictions, the imposition of sentences is a judicial function State V. DeLacruz 393 S.E.2d 184 (1990) 16 CJS Constitutional Law 173 (1984)

Appellant's sentencing phase found in his trial transcript by the Court verbatim. The Court: obviously, the minimum fine is \$50,000 dollars. You will be ordered to pay that. I will give you credit for that time on this prior to the trial.

Your sentence on this indictment, 03-185 though sir, is twenty eight years. I will run that concurrent.

The sentencing sheets record a twenty eight year sentence. A sentence that no one objected to during Judge Lloyd's passing of such.

As seen in Tant v. SCDC the appellant believes an unambiguous pronouncement of his sentence verses the unambiguous sentencing sheets, verses the constituted unchallenged authority of Judge Lloyd's passed sentence some fourteen years ago, must benefit the appellant.

Ultimately, the fundamental requirements of due process should be granted to the appellant. A process SCDC failed to provide. Appellant's sentence was change over three years ago without this department first notifying him State V. Binarr 400 S.C. 156, 733 S.E. 2d 890. Determining whether the appellant has been denied due process requires an inquiry into whether the interest involved can be defined as liberty or property within the meaning of the Due Process Clause, and if so, what process is due under those circumstances.

Accordingly judicial inquiry did not suffice at any-time in the appellant's case over fourteen years ago. Due Process requires judicial review, a judicial review that became final when Judge Lloyd passed sentence February 19, 2004. See, State V. Best 186 S.E. 2d 272, State V. Campbell *Supra*, citing Rule 29, South Carolina Rules of Criminal Procedure.

CONCLUSION

Based on the foregoing, appellant is entitled to his original release date to be calculated at 85% eighty-five percent, being released December 2026. The Order of Dismissal by the administrative law judge should be over-ruled, reversed and modified.

Respectfully submitted,

Jerome A. Owens Sr.
Jerome A. Owens
PRO SE APPELLANT

This ~~20th~~ day of May 2017