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IV. STATEMENT OF CLAIM - continued.

MAY 18 2017

The State of South Carolina
In The Supreme Court

S.C. SUPREME COURT

Appeal From Richland County
Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion # 2016-000431 (S.C. Ct. App. filed April 21st, 2017)

Bernard M. Fadden, 199135,

Petitioner,

vs.

South Carolina Dept. of Corrections,

Respondent.

Petition For A Writ of Certiorari

Bernard M. Fadden, 199135
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1) Where any post-trial court, like McFadden's 2010 criminal trial court, can rely on SCDC's false max-out date in McFadden's file; the Court of Appeals did err in not finding the ALC is in error when finding issue moot, in violation of McFadden's 14th Amendment right under the U.S. Constitution in light of Paine vs. Baker, 595 Fed. 197, 202 (U.S. App. 4th Cir. 1979)

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2) Where McFadden claimed SCDC miscalculated his sentence start date in violation of his procedural due process rights under the 14th Amendment of the U.S. Constitution, the Court of Appeals did err in not finding the ALC in error when finding McFadden's challenge to his sentence is more appropriate in (PCR), in light of State vs. Boggs, 696 S.E.2d. 579, 598 (S.C. App. 2010); and Al-Shabazz vs. State, 527 S.E.2d. 742, 750 (S.C. 2000)

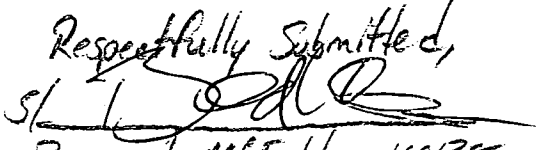
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Certificate of Counsel

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 21st, 2017.

Respectfully Submitted,

Bernard McFadden, 199135
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Date: 05/10/2017

Table of Authorities

Case Laws

- 1) AL-Shabazz vs. State, 527 S.E.2d. 742 (S.C. 2000) 7, 8
- 2) McClam vs. State, 686 S.E.2d. 203 (S.C. App. 2009) 6
- 3) Patne vs. Baker, 595 F.2d. 197 (U.S. App 4th Cir. 1979) 5, 6, 8
- 4) State vs. Boggs, 696 S.E.2d. 579 (S.C. App. 2010) 5, 8

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- 1) 24-13-40 8

Questions Presented

Question # 1

Where any post-trial court, like McFadden's 2010 criminal trial court, can rely on SCOC's false max-out date in McFadden's file, did the Court of Appeals err in not finding the ALC is in error when finding issue moot, in violation of McFadden's 14th Amendment right under the U.S. Constitution in light of Paine vs. Baker, 595 F.2d. 197, 202 (U.S. App. 4th Cir. 1979)?

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Question # 2

Where McFadden claimed SCOC miscalculated his sentence start date in violation of his procedural due process rights under the 14th Amendment of the U.S. Constitution, did the Court of Appeals err in not finding the ALC in error when finding McFadden's challenge to his sentence is more appropriate in (PCR), in light of State vs. Baggs, 696 S.E.2d. 599, 598 (S.C. App. 2010); and AL-Shabazz vs. State, 527 S.E.2d. 742, 750 (S.C. 2000)?

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Statement of the Case:

Petitioner's conviction was vacated in 2002. (See Appendix at p. 7, S.C. Supreme Court's July 11, 2002, Order.) Petitioner requested and was denied an audit to correct an incorrect 12/25/2000 max-out date for arrestwarrant # E-017123 (Indictment # 95-CS-14-187) to the correct max-out / sentence start date of April 15th, 1995. Appellant filed a grievance on 10/11/2015. After finding that McFadden was advised by a Mr. Eury that the sentencing judge and the clerk failed to add jailtime credit, the warden determined McFadden's alleged incorrect max-out date could not be adjusted by SEDE. Petitioner then filed a Step Two Grievance; this grievance was denied by Mrs. J. G. Gaston and received on 6/16/2015.

On 6/19/2015, Petitioner deposited his Notice of Appeal in the U.S. Mail to the S.C. Administrative Law Court that was docketed 6/24/2015. The ALC found that it lacked jurisdiction for two reasons; stating 1) "To the extent McFadden has raised an issue cognizable in an administrative action, this issue is moot". And 2) "McFadden's challenge to his sentence is more appropriately raised as part of his pending (PCR) action." The ALC dismissed this case on 01/27/2015.

Petitioner next filed an appeal with the S.C. Court of Appeals on 02/01/2016. After submitting his Final Brief, the court affirmed this appeal on 01/25/2017. Petitioner timely filed a petition for rehearing on 02/02/2017, and it was denied on 04/21/2017.

This case follows.

Facts For Question # 1

The record before this court will show the following facts: Although McFadden cited Paine vs. Baker, 595 Fed. 197, 202 (App. N.C. 4th Cir. 1979) to demonstrate false information in a prisoner's file will deny due process if relied upon in a decision making process, the ALC's 01/27/2016 Order of Dismissal didn't even mention Paine. (See Appendix at p. 47 of 79.) And although McFadden cited State vs. Boggs, 696 S.E.2d. 579, 598 (S.C. App. 2010) - to illustrate that even if the trial judge didn't give any jailtime in 1995, SCDC will still have to add it because its a statutory right pursuant to title 24-13-40 - the ALC (like not mentioning Paine) didn't even mention State vs. Boggs.

In Paine, the 4th Circuit US. Court of Appeals stated if an error in a prisoner's file is a technical one which would not reasonably be a factor relied on in a decision making process, no claim for relief under due process will lie, but if error is more significant, that is, involves inmates past criminal record or his record of disciplinary offenses while in prison, fundamental fairness requires it expunction for reason that it may reasonably be relied on. Id. at 595 Fed. 197, 202.

Argument:

Like the 2010 trial court in McFadden's criminal trial relied on this false information as a decision making process within the meaning of Paine, any post trial court can also rely on this clearly erroneous 12/25/2000 max-out date from the erroneous 06/01/1995 sentence start date for arrest warrant # E-017/23. (See Appx at p. 36 of 79, erroneous because McFadden was arrested

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by George McConner on 4/15/2015 - not 6/01/1995.

Additionally, because there's a controversy as to whether the 4/15/1995 sentence start date is correct versus the 6/01/1995 date claimed by SCDC to ultimately determine whether the 2010 trial court was correct in deciding the remoteness of McFadden's ten-year-old burglary conviction in post-trial courts: yet today, McFadden contends this case is not moot. And by correcting the erroneous 6/01/1995 start date, any post trial court can then rely on accurate administrative agency's records in its decision making process. Thus, there is a practical legal effect on existing controversy. See McClam vs. State, 686 Sd 203, 206 (S.C. App. 2009) (A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.)

Therefore, because this false information can be again relied upon by any post trial court within the meaning of Paine vs. Baker, 595 Fed. 197, 201 (US App. 4th Cir. 1979), this court should find an implication of possible violations of McFadden's due process rights under the U.S. Constitution's 14th Amendment. And that the Court of Appeals did err in not finding the ALC in error when finding this case moot (Appx. at p. 52) ; err in not finding controversy between two dates, one of which will required a new trial as a result of McFadden's 2010 trial court's erroneous finding that his burglary conviction was not too remote - particularly (10) years had already past had the trial court correctly used the 4/15/1995 sentence start date.

Facts For Question # 2 :

The record before this court will show the following facts:
Petitioner maintained in his grievance, in the ALC and the Court

of Appeals that SCOC [Warden Dunlap] claims he is not entitled to jail-time credits from 4/15/1995 because the judge didn't give credit. (See Appx. at pgs. 41 and 43 of 79, McFadden's original Brief ... and Warden Dunlap's 12/18/2014 decision attached as Attachment B.) No where in McFadden's agency grievance (Appx. at p. 2), in McFadden's original Brief (Appx. at pgs. 3-16) or in McFadden's Reply Brief (Appx. at pgs. 28-46) does McFadden claim the 1995 sentencing judge McGinnis' sentencing is in error - only SCOC.

However, the Court of Appeals did not find ~~err~~ where the ALC construed this case as if McFadden is attacking the sentencing court. The ALC stated, "Although Appellant is attacking his sentence length and not his conviction, his ultimate goal is to attack his 2010 conviction in his pending (PCR) action. The attack on his sentence in this court is merely a part of his (PCR) case. Therefore, while Al-Shabazz holds this court has jurisdiction over non-collateral, administrative matters related to sentencing and sentence related credits, I find this case, at its heart, a piece of a collateral attack on Petitioner's 2010 conviction, which the Supreme Court in Al-Shabazz held is a matter for (PCR) court." (See Appx. at p. 51, Order of Dismissal at p. 5 of 6.)

Argument:

Particularly, Petitioner argues that the Court of Appeals did not find liberty implicated in any post-trial review courts that could possibly find that the trial court acted on erroneous information (a false 06/01/1995 sentence start date) in SCOC files, making trial counsel ineffective as alleged in post-trial courts. That a controversy or disputes exist in two dates - April 15th, 1995,

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OF 06/01/1995.

While McFadden claims SCDC has miscalculated his sentence start date, SCDC claims the judge didn't give McFadden credit. (See Appx. at p. 46, Dunlap's 12/18/2014 disposition in Step 1 Grievance # KRCI-1176-14.) Even if judge David McGinnis denied any credit for jailtime, McFadden contends he should still be given credit in light of State vs. Baggs, 696 S.E.2d. 597, 598 (S.C. 2010) (holding that a plea judge denial of credit for time defendant served in pre-trial detention based on State's decision to drop charges against defendant from armed robbery to strong armed robbery was an error of law.)

As the Court knows, under title 24-13-40, McFadden has a statutory right to jailtime credit, and because of this statutory right - creating a liberty interest under the U.S. Constitution's 14th Amendment - SCDC has a duty to properly calculate his sentence for time served since 4/15/1995, rather than 6/01/1995.

Additionally, this Court is well aware ALC is the sole court for which Petitioner must bring his complaint about the miscalculation of his sentence, that of which the Court of Appeals ignored. See AL-Shabazz vs State, 587 S.E.2d. 742, 750 (S.C. 2000) (stating credit relating issues cannot be raised in (A/R)).

Therefore, where any post-trial court - like McFadden's 2010 criminal trial court - can rely on this false information within the meaning of Paine, where McFadden has statutory right to jailtime credit, and where complaints of miscalculation of sentence can only be raised in the ALC, this court should find that the Court of Appeals did err, reverse and remand with instructions to audit McFadden's sentence to the correct 4/15/1995 start date for arrestwarrant # E-017123. (See Appx. at p. 11 of 79.)

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Conclusion:

For the foregoing reason, this court should reverse the judgment of the Court of Appeals.

Respectfully Submitted,


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Sworn and Subscribed Before Me

This 11th day of May 2017

Catherine A. Carrison

Notary Public for South Carolina

My Commission expires: December 22, 2018



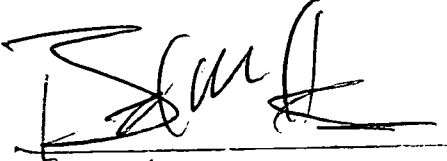
Proof of Mailing
Case# _____

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly-addressed-stamped-envelope in the U.S. Mail this 10th day of May 2017; such matter being: McFadden's (10) Page Petition For Writ of Certiorari With (79) Page Appendix And Motion To Proceed In Forma Pauperis:

1) Christina Catoe Bigelow, Assist.
General Counsel, SCDC, 4444
Broad River Rd., Columbia, S.C. 29221; and

2) Daniel Shearouse, clerk, S.C.
Supreme Court, P.O. Box 11330
Columbia, S.C. 29211

Sworn And Subscribed Before Me
This 11th day of May 2017
Catherine A. Curran
Notary Public For South Carolina
My commission expires: December 22, 2018


Bernard McFadden, 199035
Petitioner, Pro se