

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

Jose Alberto Maldonado, Appellant,

V.

South Carolina Dep't of Corrections, Respondent.

Appellate Case No. 2016-001274

RECEIVED

Appeal From The Administrative Law Court  
S. Phillip Lenski, Administrative Law Judge

MAY 30 2017

S.C. SUPREME COURT

Unpublished Opinion No. 2017-UP-209  
Submitted March 1, 2017 - Filed May 17, 2017

PETITION FOR REHEARING  
SUPPORTING MOTION, UPON NOTICE OF APPEAL

Jose Alberto Maldonado, pro se.  
Christina Catoe Bigelow, of the (SCDC), of Columbia, for Respondent.

I, Jose Alberto Maldonado, (Appellant), do hereby this Motion do seek to appeal the order of this Unpublished Opinion No. 2017-UP-209, orders may be cited in the similar manner as provided for published order under Rule 268(d)(1), SCACR, (Quoting State v. Foster, 298 S.C. 306, 379 S.E.2d 907 (1989)) See the Attachment (2) Copies Pursuant to Rule 268(d) (2), SCACR. (Affirmed) LOCKEDMY, C.J., & THOMAS, JJ., concur. Which was issued on May 12, 2017.

Respectfully Submitted

*Jose Alberto Maldonado*  
Jose Alberto Maldonado, #312648  
Kershaw Corr. Inst. MB/Room, #63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

1. Entered Rule 221(b) against the Remittitur. Pursuant To Rule 242(a) and (c).

See Attach. Grievances: Step (1), & Step(2). (1)

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MAY 30 2017

SC Court of Appeals

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CERTIFICATION OF SERVICE

MAY 30 2017

S.C. SUPREME COURT

I, Jose Alberto Maldonado, The (Appellant) do certify that I did serve the "MOTION AND NOTICE OF APPEAL" on the Respondent, within two (2) Attachment Copies of the Unpublished Opinion No. 2017-UP-209 Submitted March 1, 2017, - Filed May 17, 2017. By depositing the same in the U.S. MAil addressed as follows:

Honorable Daniel E. Shearous  
Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Ms. Christina Catoe Bigelow, Esquire  
SCDC General Counsel's Office  
Post. Office Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221-1787

Respectfully Submitted

*Jose Maldonado*  
Jose Maldonado

Further Appellant said and Certify:

This 25 day of May, 2017.

Jose Alberto Maldonado, #312648  
pro se Appellant,  
Kershaw Corr. Inst. MB/Room, #63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

SWORN TO and SUBSCRIBED Before Me

This 25 day of May, 2017

Catherine A. Amos  
Notary Public For South Carolina

My Commission Expires: \_\_\_\_\_

December 22 2018

Appellate Case No. 2016-001274

Unpublished Opinion No. 2017-UP-209  
Submitted March 1, 2017 - Filed May 17,  
2017.

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MAY 30 2017

SC Court of Appeals

Jose Alberto Maldonado, #312648  
Kershaw, Corr. Inst. MB/Room, 63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

May 25, 2017

In the Supreme Court

Honorable Daniel E. Shearous  
Clerk of Court

Post Office Box 11330  
Columbia, South Carolina 29211

Appellate Case No. 2016-001274

Unpublished Opinion No. 2017-UP-209  
Submitted March 1, 2017 - Filed May, 2017

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MAY 30 2017

S.C. SUPREME COURT

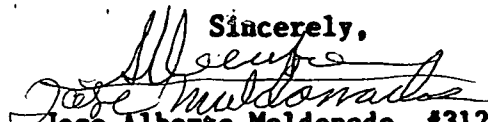
Dear Clerk of Court:

Enclosed please find the proposed Original Copy, PETITION FOR REHEARING SUPPORTING MOTION, "NOTICE OF APPEAL", in the above - captioned case.

If these PETITION FOR REHEARING, meet your approval, please sign, forward to the Honorable Court of Appeal, By LOCKEMY, C.J., and HUFF AND THOMAS, JJ., concur. Who deal with this Unpublished Opinion No. 2017-UP-209 In The Court of Appeal. To be filed and serve.

Please, Return a clock-stamped to the Appellant's Address!!!

Sincerely,

  
Jose Alberto Maldonado, #312648  
Appellant, Pro - se.

File:(1)

Attachement:(4)

Cc: AJM/HDES

Christina Catoe Bigelow, Esquire  
SCDC GENERAL COUNSEL'S OFFICE  
P.O. Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29211-1787

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MAY 30 2017

SC Court of Appeals

LEGAL

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Jose Alberto Maldonado, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-001274

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Appeal From The Administrative Law Court  
S. Phillip Lenski, Administrative Law Judge

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Unpublished Opinion No. 2017-UP-209  
Submitted March 1, 2017 – Filed May 17, 2017

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**AFFIRMED**

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**RECEIVED**

MAY 30 2017

SC Court of Appeals

Jose Alberto Maldonado, pro se.

Christina Catoe Bigelow, of the South Carolina  
Department of Corrections, of Columbia, for Respondent.

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**PER CURIAM:** Jose Alberto Maldonado, an inmate with the South Carolina Department of Corrections (SCDC) appeals the Administrative Law Court's (the ALC's) order dismissing his inmate grievance, arguing the ALC erred by (1) denying his procedural and substantive due process right to a meaningful appeal, (2) allowing SCDC to file a late brief, and (3) affirming the decision of SCDC that

2-13

his sentence was properly calculated. We affirm<sup>1</sup> pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues one and three: S.C. Code Ann. § 1-23-610(B) (Supp. 2016) (allowing this court to reverse or remand the ALC's decision if it is based on an error of law or abuse of discretion); *Al-Shabazz v. State*, 338 S.C. 354, 382, 527 S.E.2d 742, 757 (2000) ("Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions."); S.C. Code Ann.

§ 44-53-375(C)(2)(b) (Supp. 2016) (providing a person who is guilty of trafficking in methamphetamine or cocaine base between twenty-eight and ninety-nine grams should be sentenced to "a term of imprisonment of not less than seven years nor more than thirty years" for their second offense); S.C. Code Ann. § 16-1-90(A) (Supp. 2016) (classifying the offense listed in section 44-53-375(C)(2)(b) as a Class A felony); S.C. Code Ann. § 24-13-100 (2007) (explaining section 44-53-375(C)(2)(b) is a no-parole offense because it is a class A felony "which is punishable by a maximum term of imprisonment for twenty years or more"); S.C. Code Ann. § 24-13-150(A) (Supp. 2016) (providing an inmate serving a sentence for a no-parole offense "is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed").

2. As to issue two: S.C. Code Ann. § 1-23-610(B) (Supp. 2016) (allowing this court to reverse or remand the ALC's decision if it is based on an error of law or abuse of discretion); SCALC Rule 3(B) ("For good cause shown, the [ALC] may extend or shorten the time to take any action, except as otherwise provided by rule or law.").

**AFFIRMED.**

**LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

X3



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
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May 17, 2017

Jose Alberto Maldonado #312648  
Kershaw Correctional Institute  
4848 Goldmine Hwy./MB/Room 59  
Kershaw SC 29067

Ms. Christina Catoe Bigelow, Esquire  
4444 Broad River Road  
Columbia SC 29210

Re: Jose Maldonado v. SCDC (2)  
Appellate Case No. 2016-001274

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: The Honorable S. Phillip Lenski

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1 DEC 11 2014

MAY 30 2017

SC Court of Appeals

INMATE NAME: <u>Jose Alberto Maldonado</u>	OFFICE/USE ONLY
SCDC NUMBER: <u>312648</u>	Grievance No. <u>FACE 1415-14</u>
INSTITUTION: <u>Kershaw Correction Institution</u>	Code: General _____
HOUSING UNIT: <u>Magnolia B, Room # 59</u>	Policy _____
WORK ASSIGNMENT: <u>Library</u>	Disc. Hear. _____
	Class. <input checked="" type="checkbox"/> _____
	PREA _____
	Date Received <u>12/18/14</u>
	IGC Initials <u>JAM</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) The Inmate Jose A. Maldonado pursue the response date "kiosk 14-338547 12/8/2014." From Author is No.: (038600). when that information I was received did not cover my issue to the hearing I am looking? That kiosk had been submitted on 11/16/2014. Throughout's the classification is response for my view, such answer said that; ("YOU HAVE 20 YEARS SENTENCE FOR 'TRAFFICKING IN CRACK COCAINE). The ("IGP"), is to demanded a hearing for a compelled the (two) consecutively sentences. Upon [Inds. 03-GS-23-4545, & 05-GS-23-4726]. In that records, I would present the judge wrongly mislead instructions to the concurrent sentences. The Inmate assert that at the Kiosk dated 11/16/2014 stated as follows:

Pursued at the policy OP-21-09[2], INMATE RECORDS PLAN & ACTIVATING INMATE RECORDS PLAN/MATTER OF INSUFFICIENCY AND CONSTRUCTION OF SENTENCES IMPOSED.

The Inmate Jose A. Maldonado assert that by the S.C. Dept. of Corr. is policies, and the S.C. Const., Code of laws. Had been wrongly applied concurrent sentences, the (1st. one) is for (7) year, (2nd was been mislead and applied for 20 years sentenced). The Inmate's confine in custody at the KRCI. This Department of Correction must provide to the Inmate with formal notice when it seek to recalculate its initial determination through the amended sentences of the concurrences of (TRUE BILL). The (IGP), have now being submit to obtain a hearing, to recorder with a tape, and "Video Camara Review". That can be prove, or present it in his next legal due process, and fixing the concurrent sentences, accordingly is TANI V. S.C. DEPART. OF CORR., 395 S.C. 446, 718 SE.2d 753 (2011) "to quash the" [Ind., 05-GS-23-4726]; pursuant §§ 17-19-100, (44-53-375(C)(5)). Was violated § 44-53-375(C)(2)(b), for a second offense(s) see e.g., CLAIR V. STATE, 324 S.C. 144, 478 SE.2d 54 (1996); STATE V. FONSECA, 383 S.C. 646, 681 S.E.2d 1, (2009); CARRIER V. STATE, 329 S.C. 355, 495 S.E.2d 776, fn. 1, 777 (1998); SIMMONS V. STATE, S.C., 471 S.C., 471 S.E.2d 455 (1993); IN RE MAGISTRATES USE OF VIDEOCONFERENCES, S.C., 471 S.E.2d 459 (1995).

Please send me a "Update hearing" to examine the indictment(s). Jose A Maldonado, 12-11-2014  
 Because, the S.C. Department of Corrections did not have juris[diction] to the Inmate (JAM) to be in custody either KRCI. The Inmate have deadline in this matter. See the Copy Order.  
 Grievant Signature Date  
 (Attach (10) Copies)

ACTION REQUESTED: When the Department of Correction decides its original recodation of a sentence was erroneous, it mus afford the inmate formal notice of the amended sentence(s) See (Exhibits Indictments with Sentence sheets) I have the Right and opportunity to be heard through the grievance procedure. See Attached Exhibits.

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

Due to nature of grievance  
See Warden's Response  
J. Norick 12/30/14  
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM**

Attached (A); & Attachment (B)'s pending STEP 2 JAN 12 2015

DUE  
1/13/15  
KCF 4415-14

INMATE NAME: Jose Alberto Maldonado  
 SCDC NUMBER: 312648  
 INSTITUTION: Kershaw CI.  
 HOUSING UNIT: Magnolia B, Room # 59  
 WORK ASSIGNMENT: Education is Library  
 (Attachment: A-1)

**RECEIVED**  
 JAN 12 2015  
 KERSHAW CI  
 GRIEVANCE INMATE

Office Use Only  
 Grievance No. \_\_\_\_\_  
 Code: General \_\_\_\_\_  
 Policy \_\_\_\_\_  
 Disc. Hear. \_\_\_\_\_  
 Class. \_\_\_\_\_  
 Date Received 1/12/15  
 IGC Initials [Signature]

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): This appeal is for the Warden decision; in response to KRCI-1415-14. That, answer didn't cover up my Grievance Inf., from the classification #(038600). The (IGP) is to compel disclosure, with the Step 1. Were I am filed it on 12/11/2014 Kiosk # 14-338547, answer 12/8/2014. This appeal due process, pursue the records. Pursuant of SDC's Policy CP-21.09(2).

Holding, at ¶[2.1] shall, the inmate records office in the Division of the "Classification & Inmate Records is Responsible for Administering a Uniform Process for Activating Records on Inmate admitted into the (SDC)", (emphasis supplied)...? See also ¶[2.2] same policy: The Reception & Evaluation has the primary duty to received, process and enter "Sentencing documentation for all inmate received into the SDC." See id., at ¶[2.4, & 5]; the ("[R-&E Center can accept an inmate into the custody, and also the SDC provided an inmate's received an a valid commitment order"] i.e.); Tant v. S.C. Dep't of Corr., 395 S.C. 446, 718 SE.2d 753 (2011). Further the appeal pursuit the right information upon that "TRUE BILL" Supersending Incl., #05-GS-23-4726, mislead Counts, dates. from Dec. 13, 2005, & Feb. 22, 2006]. That against the Policy, (CP-21.09 ¶[2.5]); Code 1976 §§ 17-19-100, 44-53-375(C)(5), and (Violate the § 44-53-375(C)(b)(2); SCRPC, Rule 60(b)(5), USA. Const. Amend. 14. Because, therein is no valid sentence(s) to be served with the SDC. The Warden action didn't cover the (IGP), for denied the hearing, without documentation. Id. at ¶[2.2], and him raised that I am failed to indicate what type of hearing, but on the 1/7/2015 him or Ms. York, send an annual hearing without records. See, Step 3 below, Attn copy, and the (IGC've all recs.,).

Jose A. Maldonado 1/9/2015  
 Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

I have reviewed your complaint and found that Warden Dunlap addressed your concerns appropriately. Indictment 03-GS-2304545 (Cocaine distribution in proximate of a school) is a concurrent sentence, with a starting date of August 5, 2005; indictment 03-GS-2304547 (Trafficking in Cocaine) is a concurrent sentence, with a starting date of August 6, 2005 and indictment 05-GS-4726+ (Trafficking in Crack Cocaine) is a concurrent sentence, with a starting date of August 6, 2005. Indictment 05-GS-4726+ has a mandatory time of 85% (17 years). Therefore, your max-out date will be August 2022. Keep in mind, any disciplinary infractions or unemployment can cause your max-out date to change. Your sentence is correct.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 8/30/15  
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Jose A. Maldonado 9/25/2015  
 Grievant Signature Date

[Signature] 9/25/15  
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)