



The State of South Carolina  
In The Court of Appeals

Appeal From Adm. Law Court  
Adm. Law Judge: Hon. S. Philip Lenski  
Case #: 2017-001061

Dion O. Taylor, ...  
Appellant  
v.  
S.C. Dept of Corrections, ...  
Respondent

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MAY 30 2017  
SC Court of Appeals

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The State of South Carolina  
In The Court of Appeals

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Appeal from Adm. Law Court  
Adm. Law Judge: Hon. S. Phillips  
Case #: 16-ALJ-04-0513-AP

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Dion O. Taylor...,  
Appellant

v.  
S.C.D.C. ..., Respondent

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Brief of the Appellant (Initial)

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Dated:

s/ Dion O. Taylor  
#335089-F1152  
Evans Correctional Institution  
610 Evans Hwy 9 West  
Bennettsville, SC 29512

# ① Statement of Issues on Appeal: ① Dir. Adm.

Law Judge commit error of law by first separating two charges from a concurrent sentence & not awarding the 146 days of jail credit off of the aggregate incarcerative sentence of 10 yrs & were his sub. rights prejudiced due to this decision being in violation of const. & statutory provisions & clearly erroneous in view of the reliable, probative, & sub. evd. on the whole record? ② Should this Court address the issue of mootness, due to it being an issue capable of repetition, yet it would usually evade review?

## Statement of the Case

This appeal was initiated by the denial of grievances w/ the SCDC, notice of appeal from these denials was filed w/ the Adm. Law Court on 6-27-16, ALJ decision is dated 3-24-17, received by appellant on 3-29-17 & notice of appeal from ALJ decision was served on all parties in this matter on 4-27-17. Appellant was sentenced on June 3<sup>rd</sup>, 2009 for armed robbery, CDV 3<sup>rd</sup> & probation violation (original charge was failure to stop for Blue Light) in which all charges were to run concurrently for a total sum of 10 yrs. The Appellant was awaiting sentencing on all the charges he was sentenced for, did not bond out at any time, was at no time an escapee nor was he serving any sentence & awaiting sentencing on other charges. On Jan 31<sup>st</sup>, 2005, Appellant was originally sentenced for the Failure to Stop For Blue Light & the courts disposition was 2 yrs suspended, to 1 yr probation & he was to receive 146 days of jail credit. This jail credit has never actually been applied, Appellant violated this same probation & it was reinstated (Apex 1 1/2 yrs later) & this same probation

② extended until his concurrent sentencing in 2009.

## Argument

① Error of law was committed by Adm. Law Judge in not awarding jail credit time off of aggregate incarcerative sentence & was clearly erroneous & prejudiced Appellants sub. rights.

Adm. Law Judge committed error of law by not awarding Appellant jail credit time off of aggregate incarcerative sentence of 10 yrs & in doing so, Appellants right to be free from a prison term that exceeds legality, shows prejudice.

This decision was clearly erroneous in view of the reliable probative evid. on the whole record. Section 24-13-40 of the S.C. Code mandates that a prisoner receive credit for all time served prior to trial & sentencing unless one of the two exceptions exists: either the prisoner was an escapee or the prisoner was already serving a sentence on one offense while awaiting trial or sentencing for a second. Allen v. State, 339 S.C. 393, 395, 529 S.E. 2d 541, 542 (2000); State v. Boggs, 388 S.C. 314, 316, 696 S.E. 2d 597, 598 (Ct. App.) (citing State v. McCord, 349 S.C. 477, 487, 562 S.E. 2d 689, 694 (Ct. App. 2002) Section 24-13-40 provides: "in every case... full credit against the sentence must be given for time served prior to trial & sentencing..." S.C. Code Ann. § 24-3-40 (Supp. 2016). The denial of credit for time served where no exception applies is an error of law. See Boggs, 388 S.C. at 316, 696 S.E. 2d at 598. No portion of the ALS decision is explicit or implies that any exception as above-described in case law exists in the Appellants case, there is no mention of such in the order, yet credit was still denied. Section 24-13-40 also elucidates: "... when... (b), the commencement of the service of the sentence follows the revocation of probation, ... the computation

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of the time served must be calculated from the date of commencement of the sentence. See Hayes v. State, 413 S.C. 553, 777 S.E.2d 6 (2015) The Appellants case is analogous to Hayes, in myriad ways. Appellant received split sentence, his probation was reinstated, ~~and~~ extended until he was awaiting sentencing on all 3 charges, & revoked (probation) Hayes was given a sus. sentence, was given credit for jail credit days, violated his probation, was reinstated & had it ultimately revoked. In Hayes, the Dept of Corrections argued that because Hayes sentence was modified from the original 5yr to 3yr sentence, that his jail time could not be deducted from the modified sentence. Appellants sentence was modified as well, to a concurrent 10yr sentence. This Court found that to not deduct jail credit time from such a sentence would have the def. doing more time than allowed by law & that the statute was being misapplied by the PCR court & the Dept of Corrections.

Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000):

"The words of the statute must be given their plain & ordinary meaning w/out resorting to subtle or forced construction to limit or expand its scope." When the ALJ in its order/decision, takes 2 out of the 3 charges Appellant was sentenced to concurrently & in order says two of 3 sentences have expired, so the issue is moot, the ALJ has limited the scope of the statute by that act, misapplied it & made in error of law. In Blackney v. State, 529 S.E.2d 9 (2000): "... County's decision not to execute the arrest warrant until ... months later, should not preclude respondent from receiving credit..." See Travis v. State, 724 So.2d 119 (Fla. App. Dist. 1998)

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(At the time arrest warrant is transmitted... def is deemed to be in custody on the warrants... therefore entitled to jail credit on concurrent sentencing). Blackney is explicit in that no matter when warrants were served, if a person is awaiting sentencing on all charges & receives concurrent sentencing, he must receive the jail credit, not just on particular charges, but rather a reduction from the concurrent sentence. Nor does case law say or infer, that this kind of scenario would render the issue moot, if cannot be due to the concurrent nature of the sentence & current Appellant incarceration. Appellant reiterates this particular error of law; the Appellant was awaiting sentencing on all 3 charges & it is not the ALJ's error in the order, it gives different dates of arrest; the dates the ALJ order reference are the dates when the subsequent warrants were served on the Appellant while he was incarcerated. The sentencing sheets clearly show they were all before Sept. 24<sup>th</sup> 2008, the jail time the ALJ proffers that the Appellant is only due

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### Separate Statement of Facts:

Appellant directs the Courts attention to record on Appeal trans. of guilty plea, pg. 16 Lines 24-25, where w/ pub defender mentions the 146 days jail credit the Appellant is seeking (w/ split sentencing), pg 17 Lines 2-3, he states he's bringing this to the Courts attention & mentions this along w/ the 252 days credit that the Respondent & ALJ state, that only this time is due to the Appellant off of his concurrent sentence. The Appellant directs the Courts attention to the sentencing sheets which clearly show concurrent sentencing on all 3 charges & the dates of arrest of all charges, all being prior to Sept. 24<sup>th</sup> 2008, the date the ALJ & Respondent agree upon, was the

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date on which they begin counting jail time from. Appellant has provided the court w/ a declaration, lending veracity to facts of awaiting for sentencing on all 3 charges incarcerated for & that he never bonded out, ect. Plea hearing trans. portion of record on Appeal, pg 17 Line 1, pub. defender states Appellant was served w/ warrant on Oct. 1st for prob. violation, there is no mention that Appellant was out on bond when served w/ warrants, & he was indeed incarcerated when he received warrants for prob. violation & CDV <sup>3rd</sup>, Lines 2-3, pg 17 of said trans., there's an error by the transcriber of the guilty plea trans, as it should be 252 days instead of 225 number of days shown, but pub. defender nonetheless states the greater total of days the Appellant has towards the prob. violation as well as the 146 days, because he was incarcerated at all relevant times, awaiting sentencing on all charges.

### Argument

② Should this Court address the issue of mootness because it is one capable of repetition, yet evading review & is this issue moot? Even if this issue is considered moot by this Court, this Court has ruled that it will address such an issue due to repetitiousness capability, yet it would usually evade review. Appellants case is analogous in circumstance & law to the aforesaid precepts warranting a review by this Court. This issue is one addressing the calculation of Appellants sentence & the requirement that a prisoner receive credit for time he has served pre-trial before sentencing. Nelson v. Ozmint, 390 S.C. 432, 433-34, 702 S.E. 2d 369, 370 (2010) (addressing moot issue of the Dept's calculation of the prisoners sentence as not including good time credits... because it was an issue that was capable of repetition, yet it would usually evade review). Hayes v. State, 413 S.C. 553, 777 S.E. 2d 6 (2015) this Court held: "issue on appeal was moot upon def. completion

⑥

of sentence, but was nevertheless reviewable as an issue that was capable of repetition but evading review." Appellant is still incarcerated & serving concurrent sentence, Appellant trusts the Courts' judicially Acumen in deciding if this is indeed a moot issue, either way, case law & precedent compels the Court to address this issue, either due to error by ALJ's or due to penal nature of this issue of mootness. The Courts have construed issues of mootness as one of the declaratory judgment. Nelson v. Ormirt, 702 S.F. 2d 869 (2010) = "We... construe this as a mooted action for a declaratory judgment. See S.C. Code Ann § 15-53-30 (2005) (A party whose rights, status & other legal relations are affected by a statute may seek a court's determination of any construction or validity of a statute & obtain a declaration of the party's rights, status or other legal relations...); S.C. Code Ann. § 15-53-130 (2005) (purpose of the Declaratory Judgment Act is to settle & to afford relief from the uncertainty & insecurity w/ respect to rights... & other legal relations & it is to be liberally construed & administered). Town of Hilton Head v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E. 2d 801 (1992) (the S. Ct can render a declaratory judgment ~~only~~ when a justiciable controversy settling legal rights of parties exist). "When a statute is penal in nature it must be strictly construed against the State in favor of the defendant." State v. Blackmon, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991) The ALJ decision in this case supports what the Respondents have asserted & both these assertions are in error according to S.C. Law by statute & case. On 3-22-17 prior to the ALJ decision, SCDC served the Appellant w/ a Due Process Notice - Hayes v. State, Probation revocation document that states in part = "We (SCDC) have determined that this case applies to your probation revocation sentence & you are entitled to an additional 146 days." The controversy is that these days did not reduce Appellant's incarceration sentence (ie / Con. concurrent sentence) & were misapplied as to the plain language of the statute.

⑦

(re Section 24-13-40 of the S.C. code) & case laws governing cases such as these. The Courts interposing is needed so that the 146 days jail credit is taken from the incarceration & concurrent sentence of 10 yrs that applied to sentences that ALT has construed as expired, so that the Appellants prison term doesn't exceed its legal limits.

### Conclusion

The issue of mootness, due to the penal nature of this case & calculation of prison sentence should be addressed by this Court & the sub. rights of the Appellant to not serve a prison term exceeding its legal limits are violated when statute & case law governing such cases are misapplied & the jail credits are not taken from the aggregate 10yr. sentence (concurrent) as they would be according to S.C. law. Appellant seeks adjudication by this Court granting the 146 days jail credits to directly be deducted from the 10yr concurrent sentence, not the lesser encompassed sentences.

Dated:  
5-25-17

S/ D. O. Taylor  
#335089-FI-152  
EVANS Correctional Institution  
610 Evans Hwy 9 West  
Bennettsville, SC 29512

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The State of South Carolina  
In The Court of Appeals

Appeal from Adm. Law Court  
Adm. Law Judge: S. Phillip Lenka  
Appellant case #: 2017-001061

Dion O. Taylor, # 335059,

Appellant RECEIVED

v.

MAY 30 2017

S.C Dept of Corrections,

SC Court of Appeals

Respondent

Declarant of Appellant - Affidavit to Initial  
Brief

Appellant, declarant, herein declares: He was incarcerated on Sept. 24th, 2008 for armed robbery & was served w/ warrants for CDV <sup>3rd</sup> & probation violation on later dates, he never bonded out on any of these charges, & was awaiting sentencing on all 3 charges. Appellant was reinstated on probation after he was initially sentenced for Failure to Stop For Blue Light, & received probation in 2005, he violated, & this reinstatement continued & extended until sentencing on June 3rd 2009. (re probation revocation). These statements are true & correct & the declarant is a witness proving the same.

Dated:

5-25-17

Signed & executed by:  
Dion O. Taylor,  
Appellant

(11)

The State of South Carolina  
In The Court of Appeals

Appeal From Adm. Law Court  
Adm. Law Judge: S. Phillip Lensta  
Appellant case #: 2017-001061

Dion Taylor, # 335089,  
Appellant

v.

S.C. Dept of Corrections,  
Respondent

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SC Court of Appeals

Proof of Service

I, undersigned, certify that I served Initial Brief & Designation of matter to Be Included... on Adm. Law Court, Respondent & S.C. Court of Appeals by depositing a copy of it in the U.S. Mail, postage pre-paid on 5-25-17, & addressed to: Clerk's Office, S.C. Adm. Law Court, 1205 Pendleton St., Suite 224, Columbia S.C. 29201, Christina Catoe Bigelow, Esquire, Office of Gen. Counsel, S.C. Dept of Corrections, Columbia SC 29221-1787, S.C. Court of Appeals, Jenny Abbott Kitchings, Clerk, P.O. Box 11629, Columbia SC. 29211.

Dated:  
5-25-17

s/ Dion O. Taylor  
#335089-71-152  
Evans Correctional Institution  
610 Evans Hwy 9 West  
Barnettville, SC 29512

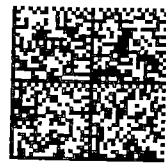
Mr. D. O. Taylor  
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EVANS Correctional Institution

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Bennettsville, SC 29512 SC Court of Appeals

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