

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

Jimmy D. Meggs Jr., 277400,

APPELLANT,

V.

South Carolina Department of Corrections,

RESPONDENT.

REPLY BRIEF
OF APPELLANT

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JUN 14 2017

SC Court of Appeals

Jimmy D. Meggs Jr., 277400
TCI SA-227B
1578 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

STANDARD OF REVIEW

As outlined in the Respondent's Brief. S.C. Code Ann. § 1-23-610 (B) provides the applicable standard of review. Specifically, as is the case here, It would fall under (a) In violation of Constitutional or Statutory Provisions;

In light of the revelation of Shannon Bogan receiving his House Arrest credit, which he served all before the enactment of the 2013 Bill and now the Department of Corrections in this case raising an issue of that Appellant was not entitled to such credit would raise to a Equal Protection Violation under the Law. Specifically, "Bogan" (2012-GS-42-784), was arrested on June 27 2011. On August 3 2011 "Bogan was released on bond and placed on Monitored House Arrest (GPS Monitoring), with \$55,000.00 Surety Bond and was on this status for 483 days until the day of his Guilty Plea (November 28 2012). "Bogan" plead guilty and the Court at that time did not award him this House Arrest Credit. Some time later, after filing a PCR, Counsel in 2016 obtained a Consent Order and the Court ultimately signed an order granting Appellant his 483 days he had spent on GPS Monitoring. However, even at the time that "Bogan" plead Guilty on November 28 2012, it was some 17 months after "Bogan had plead that the Law was signed into Law (June 7 2013) by S.C. Gov. Nikki Haley. Even though, "Bogan" still was able to go back and receive his credit essentially Retroactively.

Similarly, Appellant here served his House Arrest time, was convicted before the enactment of the Bill and Appellant here is being told by both the Respondent that he is not entitled to his credit due to Retroactivity argument. As S.C. Code Ann. § 24-13-40 states, and this Court has ruled and even the Attorney General's Opinion is that "Time served prior to trial is mandatory".

EQUAL PROTECTION UNDER THE LAW

Even assuming that Time Served prior to trial is not mandatory or that the allowance of this credit is discretionary would create an Equal Protection under the Law. Like "Bogan", Appellant was admitted to bail with this same stipulation of GPS Monitoring Like "Bogan" Appellant had to secure Bond. Like "Bogan", Appellant was restrained to his home, not allowed to leave for any reason. Like "Bogan", Appellant had to pay money to secure this GPS Monitoring (\$350.00 Month).

As there is no Governmental Interest suitably futhered by this different treatment a Equal Protection violation will result Police Dep't v. Mosley 92 S.Ct. 2286 (1972). Futher as the issue here is a Procedural issue as it relates to the process of applying credit as outlined by South Carolina Law. "In other Words , The Equal Protection of the Laws is invariably treated as a substantive constitutional principle which demands that laws will only be legitimate if they be described as just and equal." [Polyvios G. Palyviou, The Equal Protection of the Laws 4 (1980)]. The 14th Amendment prohibits the treatment of persons differently. Appellant here has a Fundamental Right to the time that he served and Appellant futher has a Property interest in the money he paid while on Monitor House Arrest. As the State Statute (§ 24-13-40) speaks specifically to the entity who "Computes and Calculates" a Prisoners Sentence" is none other than South Carolina Department Corrections. To require the Appellant to go back to the Court after the Department already knows that the Appellant did served this time, it would be illogical to require the Appellant to go back to the Court to Obtain this credit. As there is no Governmental Interest in this distinction, it would rise to the level of a Constitutional Violation.

DUE PROCESS OF LAW

Under both South Carolina and Federal Law, The Applicant does have a Due Process Right to Life Liberty and Property so Fundamentally important as to require compliance with due-process standards of fairness and justice.

PROCEDURAL DUE PROCESS

When South Carolina Law was amended, Appellant was entitled to both "Notice" and a "Hearing" as guaranteed by the Due Process Clause of both South Carolina's and the United States Constitution. As the Appellant should have been released on January 1 2017 and has to this point suffered an additional five (5) months incarceration beyond the sentence of the Court and also beyond the Statutory maximum for § 16-3-810 i.e. 20 years. See In Re Gault 387 U.S. 1, 87 S.Ct. 1428 (1967)

SUBSTANTIVE DUE PROCESS

The issue here, would rely on the Natural Law. To not allow Appellant to receive the benefit of this amendment, when it is clear that the computation of both time and Time related credits is on a Month by Month basic. To allow one "Shannon Bogan" to, after being convicted and sentenced on November 28 2012, When the Law was amended on June 7 2013 (Some 7 months later to receive this benefit of this change) and then tell the Appellant here, That I am not entitled to this credit and use the argument of Retroactivity is both Not fair and not reasonable in context and would not futher governmental objective Where, S.C. Code Ann. Clearly States Time served prior to trial and sentecning is Mandatory.

ALC COURT ORDER

The Administrative Law Court hereafter "ALC", committed was in error for at least two reasons:

1. The "ALC" erred in that they said that the "Trial Judge" was the only one who had the discretion to grant this Credit."
2. The "ALC" ruled that Appellant was not entitled to this credit

due to the Retroactivity argument.

Appellant will submit that the first reasoning by the "ALC" is manifestly wrong. Just like in the "Bogan" issue discussed herein, The Appellant would submit that the Circuit Court (ANY Judge) would be able to grant this credit, or, the Second argument incorporated, that 24-13-40 speaks directly to "SCDC" and no one else, and it would not require the Appellant to go back to Court, Where like in this case, the Respondent knows that Appellant served this 17 months, it would be incumbent upon "SCDC" to "Award this a credit. As it relates to the whole "May Argument" where "SCDC" previously argued "May being discretionary" because the language "May" did not create a right. This likewise is futile. Compare Fowler and Bolin, where this Court was faced with a situation that Fowler argued the application of the 2010 "Omnibus Crime Reduction Act", which the language there relied upon by this Court said "May", as it related to application of additional Goodtime, Workcredits ect as it related to S.C. Code Ann. § 44-53-370 (B), Where it clearly stated "May".

Contrary to the contention of the "ALC", where the Court there cited State v. Anthony 2014-UP-388, 2014 WL 5777394, The case there where Anthony fell into the time where he could have receive that credit. Contrary to Anthony, "Bogan" as discussed here, was arrested, Convicted and sentenced ALL BEFORE the enactment of the June 7 2013 Bill (Specifically November 28 2012) (Exhibit A). "Bogan" only came back some four years later and luckily was on PCR and his counsel obtained a consent order and he received his credit for this time he served ALL BEFORE THE ENACTMENT OF THE June 7 2013 Bill. This decision by the "ALC" is blantly wrong.

RETROACTIVITY

Specifically, § 24-13-40 states in it's Title "Computation of time served by Prisoner". The Statute was , like SCDC Asserted, was amended to say and may be given for any time spent under Monitored House Arrest." However what the Respondent here does not want to talk about is this :

1. WHO DOES THE COMPUTATION OF TIME SERVED ; and
2. HOW IS THIS COMPUTATION TO BE DONE ?

It is crystal clear, that once the Court gives a criminal Defendant his Sentence. They Remand to Individual to the Department of Corrections, Where they (SCDC) imputes an Offenders Sentence into their system. Which the Appellant would contend that S.C. Code Ann. § 24-13-40 speaks specifically to that entity that "Computes" time served by a prisoner.

Secondly, The question begs, How is this "Computation" is to be computed. South Carolina Code dealing with the computation (§ 24-13-100 thru 210) i.e. application of both Goodtime, Work, and Eduational Credits specifies a "Month-by-Month" accumulation. Specifically, A "No Parole Offender" or "85%" is to receive 3 days for every month served of Goodtime, when an Offender is not subject to disciplinary for misbehavior. Productive Duty Assignment or Work Credits are to likewise be awarded on a "Month by-Month" basic for up to 6 days for every month so employed or enrolled. Therefore, This process or application is an ongoing process. Where it is undisputed that Appellant served 17 months on Monitored House Arrest (From April 3 2000 until August 9 2001), Finality has not attached and it is the Department Statutory obligation to comply with that State Statute.

CONCLUSION

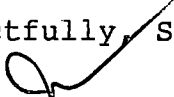
Based on the forgoing, The Appellant Prays that this Court either /or 1) **REVERSE AND REMAND** THE Aministrative Law Court's decision that 1) That the Department of Corrections is to award Appellant his 17 months while spent on Monitored House Arrest because § 24-13-40 is instructive to SCDC and they should comply, when it has been ascertained that an Offender has ((MAY) time to

credit while spent under Monitored House Arrest. and/or 2)
REVERSE AND REMAND THE Administrative Law Courts decision and
require SCDC to award Appellant's his Goodtime for time he spent
while under Monitored House Arrest, as S.C. Code Ann. § 24-13-
100 thru 210 directs the Department of Corrections in the
application of these credits. or any other remedy that this
Court deems just and proper.

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Respectfully, Submitting,

JUN 14 2017

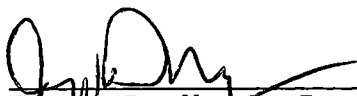

Jimmy D. Meggs Jr.

SC Court of Appeals

PROOF OF SERVICE

I Certify that I have served a copy of my Reply Brief of
Appellant on Respondent's Counsel of Record: South Carolina
Department of Corrections, Office of General Counsel, Christina
Catoe Bigelow, Esquire, P.O. Box 21787, Columbia, SC 29221-1787
by depositing the same in the United States Mail, Postage Prepaid
on this:

This 9th Day of June 2017.


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SERVED:

REPLY BRIEF

CONSENT ORDER REGARDING

CREDIT FOR TIME SERVED

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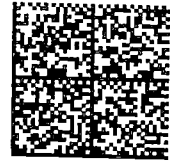
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SC. COURT OF APPEALS

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