

The State OF South Carolina
In The Court OF Appeals

Appeal From The Administrative Law Court [S.C. Dept. of
Corrections] John D. McLeod, Administrative Law Court
Case # 17-ALJ-04-0020-AP
Appellate Case # 2017-001346

Albarr-Ali-Abdullah, 191449,

vs.

South Carolina Dept. OF Corrections,

Appellant,

Respondent.

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JUN 30 2017

SC Court of Appeals

Initial Brief

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Statement OF Issues On Appeal

Issue #1:

Where SCDC records show Abdullah was not given any jailtime Credit From September 18th, 1991, on his Attempt Armed Robbery, did the ALC err in violation of Abdullah's 14th Amendment Right under the U.S. Constitution?

Issue #2:

Where Abdullah filed motions after discovering development of new evidence after receiving Step 2 decision in Grievance Appeal #1450-16, and the ALC did not rule on such motions, was Abdullah's right to petition and to be heard violated under the 1st and 14th Amendments of the U.S. Constitution?

Statement of the Case

On 10-03-2016, Abdullah filed a grievance on Ms. Engram, Mrs. White and Ms. York for refusing to correct his incorrect 03-19-2021 Max-out date. This Step One Grievance #KRCF-1450-16 was denied by Warden David Dunlap on 11-15-2016. A timely appeal of a Step Two Grievance was filed by Abdullah on 11-15-2016, and was denied 12-13-2016.

Abdullah next filed a Notice of Appeal in a timely manner with SC. Administrative Law Court on 01-10-2017, which included a motion entitled "motion To Supplement Record with Declaration in Support" at p.4 of 5. Id. This motion to supplement seeks a document showing SCDC injecting a false statement in the record stating Abdullah has (12) disciplinaries in Kiosk reference #17-444524. Id.

Without finding that at least (14) months was not added to Abdullah's Attempt Armed Robbery from September 18th, 1991, and without ordering SCDC to produce SCDC Form 19-69's to show he has (12) disciplinaries, the ALC affirm SCDC's decision 05-30-2017.

This appeal follows.

Facts And Arguments For Issue #1

As the records show, Abdullah was sentenced in 1992 with credit for his jailtime from 09-18-1991. (See Record on Appeal at 9(B) of 39, Judge J.V. Gregory's 11-11-1992 Sentencing Sheets.) Abdullah was sentenced to (25) years for Armed Robbery, (20) years for Assault and Battery With Intent to Kill, and (10) years for Attempted Armed Robbery, all to run consecutively. (See ROR at pgs. 9 [B], 8 and 9 (A) of 39, showing the same). Abdullah argued in his Step One Grievance that (51) percent of (55) years is not more than (28) years to complete. And that from 09-18-1991 til 09-18-2018 is more than enough to max-out these 55 years - Consecutive sentence (see ROR at p. 2 of 39 Abdullah's Step 1 Grievance # KRCI-1450-16 showing his argument that (28) years will satisfy service of these (55) years.

~~Despite Respondent's conviction summary~~ Shows that SCDC records show an incorrect 11-11-1992 sentence start date for his Attempted Armed Robbery (see ROR at p. 7 of 39, SCDC's 02-01-2017 Conviction Summary), the ALC affirmed SCDC's decision. (See ROR at p. 22 of 39, ALC's order not even mentioning this error.)

As this Court knows, S.C. Title 24-13-40 states, "In every Case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing." Moreover, federal case law in Wolff vs. McDonnell, 94 S.Ct. 2963, 2975 (U.S. 1963), states that, "... the State having created the right to goodtime

and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and sufficiently embraced within 14th Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the State-created right is not arbitrarily abrogated."

See also Vickers vs. Hayes, 539 F.2d 1005 (U.S. App. 4th Cir. 1976) (holding that prisoner was entitled to full credit for preconviction jailtime). And Durkin vs. Davis, 538 F.2d 1037, 1039 (U.S. App. 4th Cir. 1976) (Right to credit for jailtime a waiting trial on bailable offense and pending appeal is not matter of legislative grace but is right constitutionally mandated, available to state prisoners as well as federal prisoners). For prison disciplinary hearings, one of the requirements is to create and maintain a record of disciplinary proceedings. See Wolff vs. McDonnell 94 S.Ct. 2963, (1963) (stating written record must be created and maintained).

Therefore, as the RDA at p. 7 of 22 shows Abdullah hasn't been given any jailtime credit to the sentence he is currently serving from 9/18/1991 for Attempt Armed Robbery - about (14) months - This Court should find that Abdullah sentence is improperly calculated, and order an audit accordingly.

Facts And Arguments For Issue # 2

After Abdullah's step # 2 Grievance appeal was denied and received on 01-05-2017, kiosk # 16-403054 was

developed that fraudulently stated that Abdullah has (12) disciplinarys. (see ROA at p. 29 of 39, Abdullah's Notice of Appeal incorporating his Motion To Supplement Record with Declaration). However, the ALC Court didn't address the motion with factual basis and conclusion of law (see ROA at pgs. 22-25 of 39). Additional Kiosk dispositions were developed after Abdullah filed his 01-10-2017 Notice of Appeal: Kiosk #16-271675 stating Abdullah is correct about his sentence calculation, Kiosk #16-403054 stating Abdullah was getting a 3 for 5 when he should have been getting a 2 for 5, and Kiosk #17-492808 where the warden ignored his complaint about Classification only giving him a 3 for 5 by sending the Complaint back to classification on 3-16-2017, Like the 1st Motion, the ALC also didn't properly address this 2d Motion.

Also, after filing the appeal in this case, Kershaw Classification officials have stated that Abdullah is now getting a 2 for 5 in Kiosk #17-492808 dated 03-29-2017.¹⁾ And even though Abdullah's work credit has changed from a 3 for 5 to a 2 for 5, his max-out date still hasn't changed from 03-19-2021.

Because Ofc. Michaw has drastically cut law library hours per all the Wardens and Major Ford, no Case Law can be offered at this time to show the ALC did err in not addressing Abdullah's pending motions. To leave a motion pending is normally error in civil cases. See, for example, Medley vs. Federal Express Corp. 115 Appx. 606,

(U.S. App. 4th Cir. 2004)

¹⁾ In kiosk #16-403054, Classification indicated Abdullah was getting a 3 of 5 work credit on 04/04/2017, when the change was made to 2 for 5 in Kiosk #17-492803 his current 03/19/2021 still didn't change.

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(holding erroneous denial of motion to extend discovery and failure to address motion for additional discovery in opposition to Summary judgment motion warranted vacating of judgment and Remand for further proceeding). See also Lanham vs. Blue Crass and Blue Shield of South Carolina, Inc., 563 S.E.2d 331, ___ (S.C. 2002) holding Summary judgment was improper without ruling on insured's motions to produce and compel discovery...).

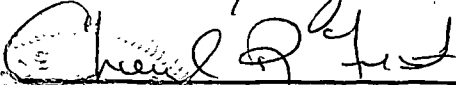
Therefore, this Court should find that the ALC did err in Not ruling on Abdullah's two pending motion, denying him the right to petition and the right to be heard under the 1st and 14th Amendments of the U.S. Constitution.

Conclusion;

For the foregoing reasons, this Court should reverse the ALC's order affirming the Department's decision, and remend with instructions for the ALC to issue an order directing the Department to correctly calculate Abdullah's sentence.

Sworn and Submitted Before Me

This 26 day of June 2017



Notary Public For South Carolina

My Commission Expires.

Jan 27, 2025

Respectfully Submitted,

Albar Ali Abdullah

Albar Ali Abdullah #791449

Kershaw Corr. Inst. O.B.57

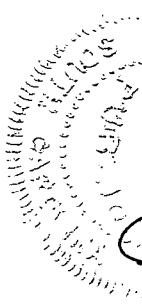
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Appellate #2017-001346

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 26 day of June 2017; such matter being: Abdullah's Initial ~~Brief~~ And Designation of Matter To Be Included In The Record On Appeal:

- 1) Jenny Abbott Kitchings Clerk, South Carolina Court OF Appeals
Post Office Box, 11629; and Columbia, SC. 29211
- 2) Christina Catoe Bigelow, Esquire Assist. General Counsel, 4444 Broad River Rd. Columbia, SC. 29221

Sworn and Submitted Before Me
This 26 day of June, 2017
 Cheryl R. [Signature]
Notary Public For South Carolina
My Commission Expires.
Jan 27, 2025

Alban Ali Abdullah
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