

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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Unpublished Opinion No. 2017-UP-209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

JUL 13 2017

SC Court of Appeals

Jose Alberto Maldonado,

Petitioner,

V.

South Carolina Department of Corrections, Respondent.

PETITION FOR WRIT OF CERTIORARI

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of Correction

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STATEMENT OF ISSUES ON APPEAL

Argument I.

Issue A: Petitioner Was Denied His Procedural And Substantial Due Process Right To A Meaningful Appeal;

see the (Appellant's Final Brief), pages (4-fo-9) issued date October 11th, 2016, with the "Records on Appeal" filed date Sept. 26, 2016.

Argument: II.

Issue B: Administrative Law Court Error In Granting Respondent's Motion To Filed Out of Time While Denying Appellant's Motion To Resolve the Appeal Adversely Without Holding A Hearing;

See the (Appellant's Final Brief), Pgs. (10-of-13) stated as follows on "Records on Appeal": (APPENDIX: (A)), "Respondent's Brief/ and Motion To Filed Out of Time, May 2, 2016; and

Argument III.

Issue C: The Administrative Law Court Decision Was Controlled by A "Clear Error of Law";

see the (Appellant's Final Brief), at page (14) Argued with the "Records of Appeal", at the (APPENDIX:(C)), as listed on Petitioner evidence had been present, Appx.C-R. P.(97 through 107) Indictments Information of § 44-53-375(C)(5). This Argument as Follows:

STATEMENT OF ISSUES ON WRIT OF CERTIORARI

Whether the Court of Appeals Correctly found Petitioner's "second offences" should be calculated by does under a "Statute", he never plead to nor "indictment" for Section 44-53-375(C)(2)(b) ?

See (Attachment (A)). the Order, issued on June 23, 2017.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the Appeal of Jose Alberto Maldonado, an Inmate in the custody of South Carolina Dep't of Corrections. On Dec. 11, 2014 Petitioner submitted a Step One Grievance, "complaining about to "demanded disclosed" with an evidentiary hearing." By argued to compel the (Two) "Consecutively sentences", with Step One, (IGP). Was denied with outh any proof by the records in behalf to (SCDC)'s Policy OP-21-098[2].

On January 9, 2015, Appellant submitted a Step Two Grievance form, which was also denied on the ground that there were, "no errors upon the both statutes", the Petitioner complaining at the both sentences. Petitioner filed a Notice of Appeal in the (ALC), then Petitioner filed his Notice of Appeal, issued date on October 20, 2015. In this Appeal, the Petitioner argues that, the (SCDC) has unlawful incarceration of prisoner sentence? See: the (APPELLANT'S FINAL BRIEF, at "STATEMENT OF THE CASE").

On March 1, 2017, The Court of Appeals AFFIRMED the ALC's Order May 20, 2016, Case No. 2016-001274, and Unpublished Opinion No. 2017-UP-209 March 1, 2017 - Filed May 17, 2017. The Petitioner Further file his Petition for Rehearing with this Hon: Court. And the Court of Appeals issued a ORDER June 23, 2017, denied the Petitioner's Petition for Rehearing without a evidentiary hearing. Petitioner now file his PETITION FOR WRIT OF CERTIORARIA, Against the ALC's Order from May 20, 2016. This Petition follows.

STANDARD OF REVIEW

Petitioner praying to this Hon: Court to reverse the Court of Appeals, that the issues one and three: S.C. Code Ann. § 1-23-610(B)(Supp. 2016). When the court affirmed, and said that (ALC's Order, "allowing the court of appeals? To reverse or remanded"), the ALC's decision' if it is based on an error of law, the court, both court "abused of discretion to review by (AL-Shabass v. State, 338 S.C. at 382, 527 S.E.2d 742, 757 (2000). See: the (Attachments: A-1). This Hon: Court, Constitutionally have to adopted and retroactive review, the doctrine regarding judicial involent at S.C. Code Ann. § 44-53-375(C)(5), disciplinary procedured and other internal complain matters. Petitioner intercede to infringement the complained, and reach "a constitutional dimension, against 'Penal Statatute under the S.C. Code Ann. § 44-53-375(C)(2)(b).'" By both Court, (ALC), and the Court of Appeals's ruling on May 17, 2017. See (Attachment: (A-2)). Because, the Court of Appeals failed to provided, a Petitioner's copy of "indictment for a second offenses sentenced, to the guilty plead to trafficking in methamphetamine or cocaine based between twenty-eight and "ninety-nine grams." See id., the Court's ruling is correct' but Petitioner have not any proof to confirm his valid senteces, with both court under the Appellant Case No. 2016-001274; and Unpublished Opinion No. 2017-UP-209. " U.S. v. Robinson, 361 U.S. 221, at 222-23, (1960).

Further, Petitioner challenge, as to issue two; "under § 1-23-610(B) when the court of appeals did not reverse or remand the ALC's decision, therefore, it is the based on an error of law wrongly applied, and that "courts abuse of discretion. Was there is no good cause to affirm ALC's Order. May 20, 2016, see: Final Brief's STANDARD OF REVIEW, p.(3) in the same matter.

ARGUMENTS

Whether the Court of Appeals Correctly found Petitioner's "second offences" should be calculated by does under a "Statute", he never plead to nor "indictment" for Section 44-53-375(C)(2)(b)?

The Court of Appeals erred in its ruling when it found the Department of Corrections correctly calculated Petitioner's sentence, through the ALC's ORDER: May 20, 2016 for trafficking in Methamphetamine under S.C. Code Ann. § 44-53-375(C)(2)(b)(Supp. 2005) see: (Attachment: B-1, through B-5). Petitioner didn't signed the Plead Agreement for a 2nd offences. Rather than § 44-53-375(C)(5) as listed on his Commitment Orders. See (ROA pg. 87) also see (Attachments: C-7: R. P.3 Lns. 14-19). Final Brief of Respondent. "Argued that (ALC)Exists to review the action of administrative agencies, and it does not have 'jurisdiction to review the action of "Circuit Court judges" in sentencing defendants.'" See § 1-23-610(B) (a) through (f), the ("ALC is subject by the Policy Op-21.09 ¶[2.1, through ¶2.18] see id. Op-21.09 ¶[2.9-10] (holdings thus: All valid Commitment Orders will be delivered to the "R&E" Inmate Records "Section Immediately upon the determination that the Inmate has "a valid sentence"). This information will provided additional identifiers, such as possible detainers notification requirements "Arrest or Convictions, for others crimes." Instead Petitioner's second-offences, verification of previous commitment(s) in the (SCDOC) and other intake data. That (State Identification ("SID") and Federal Bureau Investigation ("FBI") numbers will be entered immediately). Justify pursuant Op-21.09 ¶[2.10]. There, is Petitioner IGP....

That United States Supreme Court established that the sentence Imposed by the sentencing judge is controlling; it is this sentence that Constitutes the court's judgment and authorized the custody of a defendant. See e.g., Hill v. United States Ex rel. Wampler, 298 U.S. 460, 56 S.Ct. 760 (1936).

The Jose Alberto Maldonado's "Authorized not by the sentence as calculated by Policy Op-21.09 ¶[2.1]" (holding that: "The policy shall the inmate Records Office in the Division of Classification and Inmate Records is responsible for administering a uniform process for activating records" on inmates admitted into the South Carolina Department of Corrections ("SCDOC"). See also at Op-21.09 ¶[2.2]; the Reception and Evaluation ("R&E") Inmate Records Section at Kirklan Correctional Institution has the "primary duty to received into the (SCDOC) at Petitioner, with the circuit court its records in order. See: (ROP-R. Appx. A (21)), and (23), see the Respondent's Brief' such "Final Brief for Respondent, fall below of Section at Kirklan" (SCDOC). S.C. Code § 1-23-610(B) by not provide "Substantial Evidence" under the Op-21.09 ¶[2] with an Applicable standard of review. S.C. Code Ann. § 1-23-610(B)(a) through (f). See: the (Attachment: C-6) below this Petition. The "FINAL BRIEF OF RESPONDENT."

("The prisoner is detainee, not by virtue of the warrant of Commitment, but an account of the judgment and sentence")(Citing Farley v. Murray, 451 F.3d at 75 (2006). Here, if the Court of Appeals Ruling is "Upheld it would be found to establish that Petitioner is being held in (SCDOC) custody for a crime he never pled to," nor "Indicted" for neither sentence to by circuit court, which will entitle Petitioner to his speeder and immediated release from the custody of (SCDOC). See. Id.

Therefore the Court of Appeals erred in finding the Petitioner's sentence was correctly calculated under Section 44-53-375(C)(2)(b). See: Respondent Brief, under the (ROP - R. Appx A (21) Line 4; and R. Appx. A (23), lines 1 through 12) see ARGUMENTS, subject at Indictment 05-GS-4726". Rather then, § 44-53-375(C)(5) Case No. 05-GS-4726 inside should be reverse.

CONCLUSION

Presumptive evidence, of S.C. Code Ann. § 44-53-375(C)(2)(1) (Supp. 2005). Whether respondent support the ALC's Order were negligent. Petitioner hold that the grant of PETITION FOR WRIT OF CERTIORARI, pursuant of the "Evidence bellow this Petition. See: the (Attachments: B(1) - through - B(5))(Case No. 2005-GS-47-26 Counts 1 & 4)." Petitioner's "Plead Agreement have not been signed for consecutive offenses under Section 44-53-375(C)(2)(b)." To the Defendant (State) was required because they could not have obtained a valid order.

Modifying the "Guilty Plead" from Agust 22, 2006. So as to grant to Petitioner a survivor's position, "Respondent has not presented evidence of the sequence of events from the initial Griavances, Step One, And Step Two." Such a judgment is not a revision of a judgment for alimony, by the Court of Appeals, but this Hon: Court's ruling is to modify the Court of Appeals is decision subject to the provision of Section 44-53-375(C)(2)(b). See id., Tant v. South Carolina Dept. of Corrections, 404 S.C. 334, 759 S.E.2d 398 (2014)(Holding, an (Argument I. page, 9, and Argument III.)), of Petitioner's Final Brief with the Court of Appeals.

Petitioner reaching the Petition, holding in the case subjudice, when him do not attempt to Characterize the "status of the consent order," actually entered on April 10, 2007 sentenced was misleading - § 44-53-375(C)(5). And should be reversed.

Done this 11th day of July, 2017. Respectfully Submitted
Jose Alberto Maldonado
Jose Alberto Maldonado, #312648
Kershaw, MB/Room, #63
4848 Goldmine Highway
Kershaw, South Carolina 29067

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From The Administrative Law Court
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SC Court of Appeals

Jose Alberto Maldonado, #312648, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

CERTIFICATE OF SERVICE

Undersigned Jose Alberto Maldonado, Pro - Se, hereby that on today's date he mailed a copy of the PETITION FOR WRIT OF CERTIORARI, and PETITIONER'S PETITION TO RELAX THE RULE 242(c) SCACR, to Respondent, and the Following address, as follows:

THE SUPREME COURT OF SOUTH CAROLINA
Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211

The Hon: Jenny Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Further, Petitioner said and Certify:

This 11 day of July, 2017.

Christina Catoe Bilow
SCDC General Counsel's Office
4444 Broad River Road
Columbia, South Carolina 29221

SWORN TO and SUBSCRIBED Before Me

This 11th day of July 2017.

Sincerely, Submitted

Catherine A. Chrosa
Notary Public For South Carolina

Jose Alberto Maldonado
Jose Alberto Maldonado, #312648
Pro - Se Petitioner

My Commission Expires:

December 22, 2018

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LEGAL

Jose Alberto Maldonado, #312648
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July 11, 2017

In the Court of Appeals
Honorable Jenny Kitchings
Clerk of Court

Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

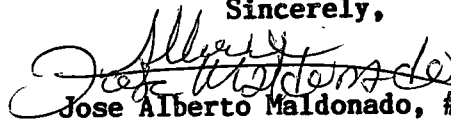
Re: Jose Alberto Maldonado v. SCDC(2)
Appellate Case. 2016-001274; Unpublished Opinion No. 2017-UP-209.

Dear Jenny A. Kitchins:

Enclosed please find the Petitioner's PETITION FOR WRIT OF CERTIORARI, And PETITIONER's PETITION TO RELAX THE RULE 242(c), SCACR. In the above captioned petition, along with Certificate of Service.

Thank you for your Valuable time in this matter, in the reference to the above-captioned (IGP) Case. Subject to this Hon: Court of Appeals. If this "copy" from the "original filed" meets, your approval, please file a copy with a clock-stamped to my enclosed self-address envelope.

Sincerely,


Jose Alberto Maldonado, #312648

Pro - se Applicant.

Cc: Christina Catoe Bigelow
Deputy General's Office
P.O. Box 21787
Columbia, S.C. 29221

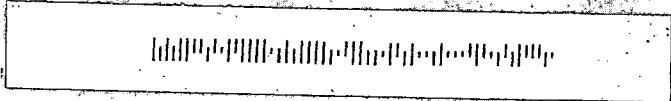
Attachments(1)(A, & B)

Attachments:(C-1, through C-10);(Attachment: (A-3)

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SC Court of Appeals

Honorable Jenny Kitchings

Clerk of Court, S.C. Court of Appeals

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