

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from the Administrative Law Court  
S. Phillip Lenski, Administrative Law Judge  
ALC Case No. 15-ALJ-04-0567-AP

S.C. SUPREME COURT

Opinion No. 2017-UP-209 (S.C. Ct. App. filed 5/17/2017)  
Appellate Case No. 2017-001525

JOSE ALBERTO MALDONADO, # 312648,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

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ATTORNEY FOR RESPONDENT

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**QUESTION PRESENTED**

**Did the Court of Appeals properly affirm the decision of the Administrative Law Court where the Administrative Law Court's order contained no errors of law and properly concluded that Petitioner failed to show that the Department of Corrections' calculation of his drug trafficking sentences was erroneous?**

## STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Jose Alberto Maldonado, an inmate in the custody of the South Carolina Department of Corrections. On December 11, 2014, Petitioner submitted a Step One Grievance complaining about the Department's calculation of his sentence. The Step One Grievance was denied on the ground that no error was found in Petitioner's sentence calculation. On January 9, 2015, Petitioner submitted a Step Two Grievance form, which was also denied on the ground that there were no errors in the calculation of Petitioner's sentence. Petitioner filed a Notice of Appeal in the Administrative Law Court on October 19, 2015. During the pendency of the appeal in the Administrative Law Court, Petitioner filed an interlocutory appeal to the South Carolina Court of Appeals, which was dismissed on February 10, 2016 and remitted on February 29, 2016. Thereafter, the appeal in the Administrative Law Court went forward, and on May 20, 2016, the Honorable S. Phillip Lenski issued an order affirming the decision of the Department of Corrections.

Petitioner appealed to the South Carolina Court of Appeals, and on May 17, 2017, the Court of Appeals issued an unpublished opinion affirming the decision of the Administrative Law Court. Petitioner then submitted a Petition for Rehearing, which was denied by order dated June 23, 2017. Petitioner submitted a Petition for a Writ of Certiorari dated July 11, 2017, and this Return follows.

## ARGUMENT

**The Court of Appeals properly affirmed the decision of the Administrative Law Court where the Administrative Law Court's order contained no errors of law and properly concluded that Petitioner failed to show that the Department of Corrections' calculation of his drug trafficking sentences was erroneous.**

The jurisdiction of the Administrative Law Court ("ALC") to hear this matter was derived from the decision of this Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. This Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), this Court held that the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

In this case, the Court of Appeals properly affirmed the ALC's order and the determination of the Department of Corrections. First, the ALC properly allowed the Department additional time to file its brief. See 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.") (See ROA, p. 1-2; Appendix "Attachment A-2" – second page of Court of Appeals' unpublished opinion).

Second, the ALC properly concluded that it did not have jurisdiction to review the

underlying validity of Petitioner's sentences. See Jernigan v. State, 340 S.C. 256, 259-60, 531 S.E.2d 507, 508-509 (2000) (post-conviction relief is a proper avenue of relief when the defendant wishes to attack the validity of his underlying conviction or sentence). (See ROA p. 3). The ALC sits to review only the Department's actions in enforcing Petitioner's sentence as written by the sentencing judge. Kiawah Development Partners, II, v. S.C. Dep't of Health and Environmental Control, 411 S.C. 16, 53-54, 766 S.E. 707, 728-29 (2014) (recognizing that the ALC's function is to review agency decisions); see also Tant v. South Carolina Dep't of Corrections, 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) (holding that "the Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence").

Third, Petitioner has failed to show that the Department of Corrections committed any error with respect to the calculation of his sentences. Petitioner was committed to the Department of Corrections to serve multiple concurrent sentences, the longest of which are two twenty-year sentences for trafficking in methamphetamines, 28-100 grams, second offense, under indictment number 2005-GS-47-26, counts I and IV.<sup>1</sup> (See ROA p. 3; see ROA p. 82 & p. 87 - sentence sheets; see also ROA p. 6, lines 9-14). These are eighty-five percent "no parole" offenses since they carry up to thirty years. See S.C. Code § 24-13-100; § 24-13-150(A); S.C. Code § 44-53-375(C)(2)(b). Significantly, the sentence sheets themselves – which are both signed by Petitioner – note that the sentences are 85% sentences. (See ROA p. 82 & p. 87).

The earliest possible date Petitioner could be released from his twenty-year sentences – considering his sentence start date of August 6, 2005 as ordered by the sentencing judge – is

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<sup>1</sup> Although Petitioner was indicted under S.C. Code § 44-53-375(C)(5), which carries twenty-five to thirty years, the sentence sheets reflect that he pled down to S.C. Code § 44-53-375(C)(2)(b) – under


August 2022.<sup>2</sup> (See ROA p. 4). This is the max-out date calculated by the Department. (See <http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000312648>; see also ROA p. 4). Petitioner has failed to show that the Department's calculations are incorrect in any way. Therefore, the Court of Appeals' opinion affirming the order of the ALC should be upheld.

### CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

### **SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

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CDR Code 0389 – which carries seven to thirty years. (See ROA p. 82 & 87).

<sup>2</sup> Eighty-five percent of twenty years is exactly seventeen years.

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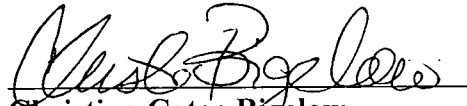
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Return to Petition for Writ of Certiorari** to Petitioner, addressed as follows: **Jose Alberto Maldonado**, Kershaw Correctional Institution, MB/Room # 63, 4848 Goldmine Highway, Kershaw, South Carolina, 29067.



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