

6

State of South Carolina
United State Court of Appeal

Keith R. MYERS, #250863 }
Appellant }

v.s. }

South Carolina Dept. Corr. }
Respondent }

Notice to Appeal
RECEIVED

SEP 06 2017

SC Court of Appeals

Appellant is asking the honorable Court of Appeal to consider Appellant Motion to Appeal the final decision of the administrative Law Court judge Mr. Funder Burk Jr, Final Order under Section 1-23-610: Standard of Review of S.C. Code (2015). Sets forth the standard of review of decision by the ALC on an appeal from an administrative agency...

8

This matter is before the administrative Law Court ("ALC" or "Court") pursuant to the appeal of Keith R. Myers, #250863 ("Appellant") against the South Carolina Department of Correction General Counsel's ("SCDC" or "Department") decision to change appellant sentence...

1. The changing of Appellant Sentence from a non-violent sentence to a 85%

sentence due to South Carolina Department of Correction General Counsel's interpretation of Section: 44-53-375(B) in conjunction with Bolin v SCDC... see Exhibit A.

Due to SCDC General Counsel's interpretation of section 44-53-375(B) in conjunction with Bolin v SCDC... South Carolina Department of Correction changed appellant sentence to an 85% sentence from an 65% sentence which affected the appellant time he was serving for a TEN (10) years non-violent sentence.

Not only was appellant given additionally time on his sentence, his Parole and Furlough and Good time Credit etc was taken away from appellant.

South Carolina Department of Correction stated that by changing appellant sentence to a 85% sentence it didn't affect appellant sentence, but it did because it moved appellant max-out date from Sept. 2020 to March of 2024.

The Onus for upward recalculation of a sentence must be placed on the Department and not the inmate and the interpretation of the unclear sentence must be made by a Judicial

officer and not by an executive agency.

When the Department proposes to reinterpret a sentence in a manner that would increase the time an inmate must serve the department must notify the inmate of the proposed change and of his right to judicial interpretation of the sentence...

If the inmate does not agree to the department proposed reinterpretation, then the department should bring a declaratory judgment action in the court of General Session.. See: S.C. Code Ann 1553-20(2015) compare in *Shaquilly O'NEAL B*, 684 S.E.2d 549 (2009)

By S.C.D.C. General Counsel's recalculation of appellant sentence SCDC affected appellant sentence. See: *Tant v SCDC* 754 S.E.2d 398 4th Cir (2014) and *Sprouse v state* 585 S.E.2d 278
SEE Exhibit B.

South Carolina Department of Corrections is in violation of appellant plea agreement which is a contract of law governed by the law of contracts. See: *Santobello v New York* 404 U.S. 257; *U.S. v. Ringling* 988 F2d 504 and

and U.S. v. Gottesman 122 F3d 130..

South Carolina Department of Correction is also in violation of Constitutional Article 1's Separation of Power: which language clearly states: The legislative, executive and judicial power of the government shall be forever separate and distinct from each other and no person or persons exercising the function of one of said department shall assume or discharge the duties of others 1970(56) 2689, 197 (57) 315...

Respondent states that appellant Inmate records show that his current Distribution Conviction remain statutorily classify as non-violent and additionally appellant SCDC Classification list him as a non-violent offender, But this is not true because if offender classification was a non-violent classification offender sentence would have never changed nor would have appellant Parole, Furlough and good time Credit etc. would have been taken away

Conclusion

The Appellant is asking the Court of Appeal to order the S.C. Dept. of Correction to honor the sentence that was oppose on the defender by the judge that was a Recommendation reach by the state in a plea agreement in the Court of General Session, Court of Common Plea Charleston County.

Certificate of Service

I Keith R. Myers, # 250863 hereby certify that I have served correspondence with a Notice of Appeal to S.C. Dept of Correction in regards to the recalculation and Classification status of appellant sentence and upon the S.C. Court of Appeal by depositing it in the U.S. Mail Postage Pre-Paid address as follow...

U.S. Court of Appeal 1015 Sumter St. P.O. Box 11629 Columbia, SC. 29211	/	Cheron Hess S.C. Dept. of Correction 4444 Broad River Rd Columbia, SC. 29211
--	---	---

8.30.17

Date

Keith R. Myers

Keith R. Myers

RECEIVED

SEP 06 2017

SC Court of Appeals

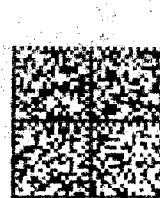
Sworn to and Subscribed Before Me

This 30th Day of August 2017

Signed: Jolanda King
Notary Public of South Carolina

My Commission Expires: 1/20/2022

5147 R MIYETS, # 250863
Immigration ReEntry & Work Release Center
2 Beckman Dr. W7-C1B
Columbia, SC. 29203



UNITED STATES POSTAGE
EAGLE
PITNEY BOWES
02-1P \$ 001.11
0000880708 AUG 30 2011
MAILED FROM ZIP CODE 29203

RECEIVED
SEP 06 2011
SC Court of Appeals

United State Court of
Appeal S.C.
1015 Sumner St.
P.O. BOX 11629
Columbia, SC.
29211