

Brief By the Petitor
IN the
South Carolina Court of Appeal

Case Number: 2017-001843

Keith R. Myers: #250863

✓
South Carolina General Counsel's

Manning ReEntry and Work Release Center

Appeal from Decision of SCDC

A Judgement from Charleston County 9th Judicial Cir

Indicement / Case No: 2015-95-10-03155

Entered: Sept. 15, 2017

Cheron Hess, Adm. Assist.
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444 Broad River Rd
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Pro. Se. Litigant
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SC Court of Appeals

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Statement of Issues On Appeal

This matter is before the South Carolina Court of Appeal ("SCCA" or "Court") pursuant to the appeal of Keith R. MYERS ("Appellant") against the South Carolina Department of Correction General Counsel's ("SCDC" or "Department")

Appellant is appealing the following issue of the General Counsel's ("SCDC" or "Department") decision to change appellant sentence...

Appellant is also appealing the Final Decision / Order of the Administrative Law Court Judge Mr. FunderBurk, JR.

1. Changing appellant sentence from a non-violent 65% 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*

2. Administrative Law Court Final Decision of Order Affirmed by the Honorable H. W. FunderBurk, JR., Judge...

Statement of the Case

This matter is before the South Carolina Court of Appeal ("SCCA" or "Court") pursuant to the appeal of Keith R. Myers, #250863 ("Appellant") an inmate incarcerated with the South Carolina Department of Correction General Counsel's ("SCDC" or "Department") Respondent.

Appellant is appealing South Carolina Department of Correction General Counsel's decision to change appellant sentence from a non-violent 65% sentence to a 85% violent sentence due to SCDC General Counsel's interpretation of *Bolin v. SCDC* in conjunction with section 44-53-315(B) with CDR code 3039.

On Feb. 6, 2017 appellant was given a Due Process Hearing at Evans Correction Inst. by Ms. D Roberts ("Caseworker") stating that SCDC General Counsel's Final decision on changing appellant sentence.

Appellant filed his first step 1 Grievance form on Feb 8 2017 appealing SCDC General Counsel's Final decision to change appellant sentence.

On Feb 18, 2017 appellant filed his step 2 Grievance Form stating his dissatisfaction with SCDC General Counsel's

decision...

On March 14, 2017 appellant received his step 2 Grievance form back & was denied relief from the issue at hand.

Argument

This matter is before the South Carolina Court of Appeal in regards to South Carolina General Counsel's charging appellant ("Keith R. Myers; #250863") sentence from a non-violent 65% offense to a 85% violent offense which is in violation / Breach of Contract of appellant plea agreement that was conceded between appellant; His attorney Ms. Donna Taylor ("ESQ") and Ms. Stephanie B. ~~Linder~~ Linder ("Asst. Solicitor") of the Ninth Judicial of the State of South Carolina County of Charleston in the General Session Court of Common Pleas...

SEE: Sprouse v state 585 S.E.2d 278 and Santobello v New York 35 A.d. 2d 316...
state v Tate 845 F 3rd 571 (2017)

The anus 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 / HER right to Judicial Interpretation of this the sentence, IF the inmate does not agree to the department proposed reinterpretation then the department should bring a declaratory judgement action in the Court of General Session... See: *Tant v SCDC* 754 S.E.2d 318 14th CIR. (2014)...

South Carolina Department of Correction General Counsel's is also in violation of South Carolina Article I § 8 Separation of Power doctrine which language clearly states in the government of this state, 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 functions of one of said department shall assume or discharge the duties of others...

Under a Separation of Powers; The Legislative department makes the laws; the executive department ("SCDC") carries the law into effect, and the Judicial department ("Charles-ton 9th Circuit Court") interprets and declares the laws. See: *Condon v Hodges* (sc 2002) 349 sc. 232, 562 S.E.2d 623 and *State v Langford* (s.c. 2012) 735 S.E.2d 471

Appellant is asking the honorable Court of Appeal to except the appellant Motion to Appeal the Final Decision of the Administrative Judge Mr. Funder Burk, Jr Final Order under section 1-23-610: Standard of Review of the s.c. code (supp 2015). sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency...

Conclusion

The Appellant ("Keith R. Myers, #250863") is asking the honorable South Carolina Court of Appeal to have the South Carolina Department of Corrections General Counsel to honor the sentence that was oppose on the appellant that was a Recommendation by the state in a Plea Agreement that was reach between the Appellant; His Attorney Donna Taylor ("ESQ") and Ms Stephaine B Linder ("Asst Solicitor") of the Ninth Judicial of the state of South Carolina County of Charleston in the General Session Court of Common Pleas.

State of South Carolina
South Carolina Court of Appeal

Keith R. MYERS; #250863

Appellant

v.s.

South Carolina Dept. of

Corrections; Respondent

Certificate of Service

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I hereby certify that a copy of the foregoing Brief was this date served upon the following individuals by placing a copy of the same via mail to HIS/HER last known address as follows:

South Carolina Court of Appeal

Jenny Abbott Kitchings, Clerk

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Columbia, SC 29211

Cheron Hess; Adm. Assist.

Office of General Counsel's

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Columbia, SC. 29221

Honorable Funder Berk, Judge
South Carolina Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton St, Ste 224
Columbia, SC. 29201

Certificate of Service

I Keith R. Myers, #230863 hereby certify that I have served a copy of Initial Brief and Copy of Rule 209 Designation of Matter upon Cheron Hess; Honorable H.W. Funder Burk Jr and South Carolina Court of Appeal by depositing it in the U.S. Mail Postage-Pre-Paid addressed as follows:

South Carolina Court of Appeal Jenny Abbott Kitching, Clerk P.O. Box 11629 Columbia, S.C. 29211	/	Cheron Hess; Adm. Assit. Office of General Counsel SCDC 444 Broad River Rd Columbia, SC 29221
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Honorable H.W. Funder Burk, Jr
South Carolina Administrative Law Court
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10-16-17
Date

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Keith R. Myers
Keith R. Myers

Sworn to and Subscribed Before Me,
This 16th Day of October 2017
Signed: Jolanda Long
Notary Public of South Carolina
My Commission Expires 11/20/2022

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