

RECEIVED

NOV 06 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

CLIFTON D. LYLES, 294075.....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

APPELLATE CASE NO. 2017-001994

MOTION TO RE-INSTATE
APPEAL

Appellant comes before this Honorable court to request that his appeal be re-instated based on the following:

Appellant contends that the Honorable Clerk of court dismissed his appeal prematurely, based on "his failure to file an appendix with the court and to provide a proof of service showing that a copy of the appendix has been served on the opposing counsel as required by Rule 242(e) of the South Carolina Appellate Court Rules".

While it is true that Appellant's initial "Petition for Writ of Certiorari", dated, October 18, 2017, was not accompanied with an "Appendix or a "proof of service", the cover letter did request that Appellant be contacted if there were any further instructions for him. It was Appellant's belief that by making

that request, that the court would inform him of any corrections that needed to be made, as long as the thirty (30) day time limit for complying with Rule 242(c) had not expired.

Appellant contends that the thirty (30) day time limit for filing the petition and serving the appendix has not yet expired. Appellant first received the letter/order from Honorable Clerk, dated September 29, 2017, on October 9, 2017. See the envelope the order was received in, which was dated stamped by the Kirkland R&E Center dated October 2, 2017. The Kirkland R&E Center then forwarded the letter to the Turbeville Institution, which stamped it as received on October 4, 2017. Due to the constant lock-downs from the shortage of staff, and a massive movement of inmates here at the Turbeville institution, to allow for the Addictive Treatment Unit (ATU) and its inmates to be relocated here from the Lee Institution, Appellant was not allowed to report to the mailroom to retrieve the letter until October 9, 2017. Therefore, the thirty (30) day time limit should not be expired until November 8, 2017.

While Appellant do note that the Honorable Clerk's order does designate on page two of the letter/order, that Appellant has fifteen (15) days from the date of that order to comply with Rule 242, that requirement is fundamentally unfair. The order actually cuts in half the thirty (30) day time limit specified by Rule 242(c). Fundamental fairness dictates that Appellant be allowed the same courtesy under the rule as all others similarly situated. Therefore, Appellant should be given thirty (30) days to comply with the order. Because the 30 days does not expire until November 8, 2017, Appellant should have eight

(8) days remaining to bring his appeal into compliance with Rule 242(e). So, it is for that reason that Appellant is Respectfully requesting that his appeal be re-instated.

Respectfully Submitted

This 31 day of October, 2017

BY:

Clifford Lyle 2941075

PRO SE

1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

eme Court of South Carolina
SHEAROUSE, CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

RECEIVED
OCT 04 2017
MAIL ROOM
TURBEVILLE CI

Hasler
09/29/2017
US POSTAGE

FIRST-CLASS MAIL
\$00.46⁰
ZIP 29201
011D12602823



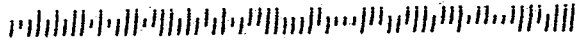
RECEIVED
OCT 02 2017
KIRKLAND R&E CENTER
MAILROOM

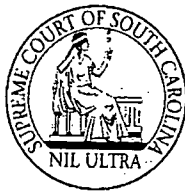
Turbeville

SB27MB

CLIFTON LYLES #294075
KIRKLAND R&E CENTER
KCI-BII-53
4344 BROAD RIVER ROAD
COLUMBIA SC 29210

2921034098 0077





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE-BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 29, 2017

Mr. Clifton Lyles #294075
Kirkland R&E Center
KCi-BII-53
4344 Broad River Road
Columbia SC 29210

Re: Clifton Lyles #294075 v. SCDC
Appellate Case No. 2017-001994

Dear Mr. Lyles:

This Court has received your notice of appeal to review the decision of the South Carolina Court of Appeals in this case,¹ and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with

¹ Before the Court of Appeals, the Appellate Court Case Number is 2017-001255.

the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

For this matter to proceed, it will be necessary for you to do the following within fifteen (15) days of the date of this order:

- (1) The \$100 filing fee required by Rule 242(c), SCACR, or a motion to proceed *in forma pauperis*.
- (2) Serve and file a petition for a writ of certiorari as required by Rule 242(c), SCACR. The petition must have the content specified by Rule 242(d), SCACR. One copy of the petition must be served on opposing counsel, and an original and six copies of the petition must be filed with this Court. The copies filed with this Court must be accompanied by a proof of service showing that a petition has been served on opposing counsel.
- (3) File two copies of an appendix with this Court. The appendix must have the content specified by Rule 242(e), SCACR. You will also need to provide a proof of service showing that one copy of the appendix has been served on opposing counsel.

For your convenience, I have enclosed a copy of Rule 242, SCACR.

Very truly yours,



CLERK

Enclosure

cc: Kensey Collins, Esquire
Melissa Jill Arnold, Esquire
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

CLIFTON D. LYLES, 294075.....APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

APPELLATE CASE NO. 2017-001994

PROOF OF SERVICE

I, Clifton Lyles (Appellant), do hereby, promise that I did serve the "MOTION TO RE-INSTATE APPEAL" on the Respondent, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows:

OFFICE OF GENERAL COUNSEL
MELISSA JILL ARNOLD
P.O. BOX 21787/4444 BROAD RIVER ROAD
COLUMBIA, S.C. 29221-1787

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, S.C. 29211

This 31 day of October, 2017

BY: Clifton Lyles 294075
PRO SE
1578 CLARENCE COKER hwy
TURBEVILLE, S.C. 29162

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

CLIFTON D. LYLES, 294075.....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

APPELLATE CASE NO. 2017-001994

PETITION FOR WRIT OF
CERTIORARI

CLIFTON D. LYLES
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

ATTORNEY FOR APPELLANT

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS
MELISSA JILL ARNOLD
P.O. BOX 21787/4444 BROADRIVER
COLUMBIA, S.C. 29221-1787

ATTORNEY FOR RESPONDENT

THE HONORABLE JENNY ABBOTT KITCHINGS
P.O. BOX 11629
COLUMBIA, S.C. 29211

CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS

TABLE OF CONTENT

TABLE OF AUTHORITIES.....2
STATEMENT OF ISSUES ON APPEAL.....3
STATEMENT OF THE CASE.....4
RELEVANT FACTS.....5
DISCUSSION.....7
CONCLUSION.....9

TABLE OF AUTHORITIESBODDIE V. CONNECTICUT, 401 U.S. 371 (1971).....7BOLIN V. S.C.DEPT.OF CORR., 415 S.C. 276, 781 S.E

2d 914 (Ct.App.2016).....7

EX PARTE: MARTIN V. STATE, 321 S.C. 533, 471 S.E.2d 134 (1995).....6STATUTES

OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010.....3,5,6

ACT 154(H-3545).....3,4,6

SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(c).....2,6

SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(d).....7

SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(d)(1)(iii).....7

SOUTH CAROLINA CODE ANNOTATIONS §44-53-370.....4,6

SOUTH CAROLINA CODE ANNOTATIONS §44-53-375.....4,6

SOUTH CAROLINA CODE ANNOTATIONS §44-53-470.....4,5,6

SOUTH CAROLINA CODE ANNOTATIONS §44-53-470(b).....4

SOUTH CAROLINA CODE ANNOTATIONS §44-53-470(c).....4

28 U.S.C. §1915(b)(4).....7

STATEMENT OF ISSUE ON APPEAL

DID THE COURT OF APPEALS ERR BY DENYING APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS AND THEREBY DISMISSING HIS CRIMINAL APPEAL FOR FAILURE TO PAY THE NOTICE OF APPEAL FILING FEE AS REQUIRED UNDER RULE 203(C), SCACR?

STATEMENT OF CASE

This case comes before the South Carolina Supreme Court pursuant to the appeal of Clifton D. Lyles (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Appellant filed a step one grievance on July 7, 2016, claiming that his sentence should be modified in compliance with the new 2016 amendment of the "2010 Omnibus Crime Reduction and Sentencing Reform Act, Act 154(H-3545), effective April 21, 2016". That grievance was investigated and denied when SCDC determined that the amendment did not apply to drug "Trafficking" offenses. Appellant filed a step two grievance on July 21, 2016. That grievance was also investigated and denied on August 19, 2016 stating that the step one grievance response was correct. Appellant then filed a notice of appeal in the Administrative Law Court on September 6, 2016. On May 12, 2017, the appeal was dismissed by the Honorable S. Phillip Lenski, stating that the court lacked subject matter jurisdiction to hear appellant's argument that his sentence should be modified based on recent statutory changes. On June 8, 2017, Appellant filed an appeal with the South Carolina Court of Appeals. Appellant also filed a Motion to proceed in forma pauperis to waive the one hundred dollar Notice of Appeal filing fee as required under Rule 203(c)-, SCACR. The motion was denied on July 13, 2017, and appellant was ordered to pay the filing fee. The appeal was dismissed on August 2, 2017, for failure to pay the filing fee. The petition for rehearing was denied on September 14, 2017. Appellant filed this instant appeal with the Supreme Court on September 25, 2017.

RELEVANT FACTS

On April 21, 2016, the General Assembly passed a bill known as Act 154(H-3545), amending the "2010 Omnibus Crime Reduction and Sentencing Reform Act". In that bill, the General Assembly amended the following three drug statutes: S.C.Code Ann. §44-53-370, 44-53-375 and 44-53-470.

In amending those statutes, the bill specifically states its purpose as: "To amend sections 44-53-370 and 44-53-375, both as amended, relating to controlled substance offenses, both so as to remove certain provisions pertaining to prior and subsequent controlled substance convictions"; To amend Section 44-53-470, as amended, relating to when a controlled substance offense is considered a second or subsequent offense, so as to provide that a conviction for Trafficking in controlled substances must be considered a prior offense for purposes of any controlled substance prosecution".

In Section 10 of that bill, the General Assembly took the language that originally appeared in §44-53-470(b), and re-assigned it as 44-53-470(c). It then added the following language to 44-53-470(c), "For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough". It then added as §44-53-470(b), the following language, "In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating

to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article".

Based on the General Assembly's stated purpose at section 44 of the June 2, 2010 version of the bill, (in pertinent part) "...It is the intent of the General Assembly that the provisions in Part II of this Act shall provide cost effective prison release...", and it's stated purpose in the April 21, 2016 amended version of that same bill, "To amend section 44-53-470, as amended, relating to when a controlled substance offense is considered a second or subsequent offense, so as to provide that a conviction for trafficking in controlled substances must be considered a prior offense for purposes of any controlled substance prosecution", shows its intent that unfair sentencing schemes concerning but not limited to, drug "trafficking" offenses be corrected. That individual's sentences be modified accordingly and that they receive earlier release dates.

Appellant is currently serving a 30 year sentence for trafficking crack cocaine, 10 to 28 grams, 3rd offense. The state used a 1991 possession of cocaine conviction and a 2002 marijuana conviction to enhance Appellant from a first offender, which carries a minimum maximum sentence of 3 to 10 years, to third which carries a minimum maximum sentence of 25 to 30 years. Appellant should receive the benefits of the amendment. see INITIAL BRIEF FILED IN THE SOUTH CAROLINA COURT OF APPEALS, DATED JULY 13, 2017, ISSUE ONE, PAGE 5-8 (EXHIBIT).

Appendix

DISCUSSION

Appellant contends that his appeal should not have been dismissed and that his motion to proceed in forma pauperis should have been granted based on the following:

CRIMINAL APPEAL

Appellant contends that the court of appeals failed to note that the issued he is attempting to appeal is part of a criminal appeal in-that it deals with an amendment of a penal statute.see 2016 AMENDMENT OF THE 2010 OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT, ACT 154(H-3545), EFFECTIVE APRIL 21, 2016, AMENDING S.C.CODE ANN.§44-53-370, 44-53-375 and 44-53-470. Because that penal statute actually affects the length of the criminal sentence that Appellant is required to serve, then it is a criminal appeal.

The Appellant's request to avoid the filing fee requirement and to proceed without payment of costs is permitted under South Carolina law. In the case of Ex Parte: Martin v. State, 321 S.C. 533, 471 S.E.2d 134(1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The court held that "in the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions." 471 S.E.2d at 134-135.

In the present case, there is a statutory provision allowing the courts to waive the payment of the \$100 filing fee as required by Rule 203(c), SCACR, under circumstances presented by the

by the Appellant. Rule 203(d), SCACR, provides two exceptions: (1) for a criminal appeal, and (2) for an appeal by the state of South Carolina or its departments or agencies. Because Appellant is appealing a criminal matter, then Rule 203(d)(1)(iii) allows for the filing fee to be waived.

LIBERTY INTEREST AND FUNDAMENTAL RIGHT

Appellant contends that he has a liberty interest in the amendment of the statute in that the effect of it would remove twenty (20) years off of his sentence. To restrict Appellant from pursuing this appeal because he can not afford to pay the filing fee, denies him access to the courts, which is a denial of his fundamental right to due process. Boddie v. Connecticut, - 401 U.S. 371 (1971) (In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that a prisoner has no assets and no means by which to pay the initial filing fee); 28 U.S.C. § 1915(b)-(4).

SIGNIFICANT PUBLIC INTEREST

Appellant contends that this appeal involves significant public interest because it: (1) Prevents the fall out that occurred after the passing of the 2010 Omnibus Crime Bill that has the Department of Corrections facing several tort claims after the South Carolina Court of Appeals' ruling in Bolin v. S.C. Dept. of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct.App. 2016); and (2) It will save all involved (i.e. general public, Circuit Courts, SCDC, Administrative Law Court, etc.) time and money by, addressing the matter now opposed to hearing the appeals of the thousands affected, and will be affected in the near future.

CONCLUSION

This Honorable Supreme Court should allow Appellant's appeal to be reinstated. The appeal should be heard in this court's original jurisdiction due to the significant public interest and lower courts needed instructions on the matter which will ultimately be appealed to this court.

Submitted This 31 day of October, 2017

BY:


PRO SE

1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from South Carolina Court
of Appeals

CLIFTON D. LYLES, 294075.....APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

APPELLATE CASE NO. 2017-001994

APPENDIX

CLIFTON D. LYLES
PRO SE
1578 Clarence Coker Hwy
Turbeville, S.C. 29162

ATTORNEY FOR APPELLANT

MELISSA JILL ARNOLD
P.O. BOX 21787/4444 BROAD RIVER
COLUMBIA, S.C. 29221-1787
ATTORNEY FOR RESPONDENT

THE HONORABLE JENNY ABBOTT KITCHINGS
P.O. BOX 11629
COLUMBIA, S.C. 29211

CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS

INDEX

INDEX.....i

ORDER DISMISSING PETITION FOR REHEARING, DATED SEPTEMBER 14, 2017.....1

MOTION FOR REHEARING, DATED AUGUST 7, 2017.....2

MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING, DATED AUGUST 7, 2017.....3

ORDER DISMISSING APPEAL, DATED AUGUST 2, 2017.....8

ORDER DISMISSING MOTION TO PROCEED IN FORMA PAUPERIS, DATED JULY 13, 2017.9

APPELLANT'S INITIAL BRIEF.....10

RESPONDENT'S INITIAL BRIEF.....30

MOTION AND NOTICE OF APPEAL, DATED JUNE 8, 2017.....39

ADMINISTRATIVE LAW COURT ORDER OF DISMISSAL, DATED MAY 12, 2017.....41

RESPONDENT'S BRIEF, DATED JANUARY 19, 2017.....43

APPELLANT'S BRIEF, DATED 2016.....49

RESPONDENT'S RECORD ON APPEAL, DATED NOVEMBER 23, 2016.....53

The South Carolina Court of Appeals

Clifton Lyles #294075, Appellant,

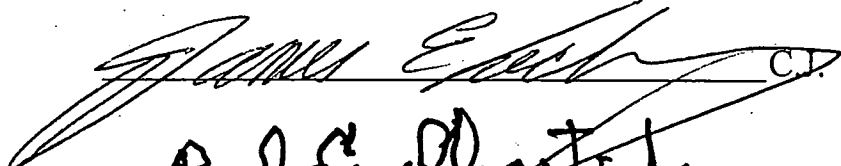
v.

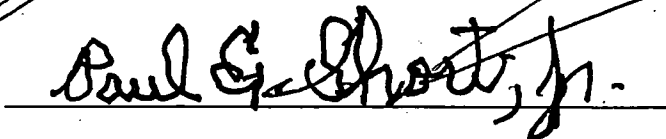
South Carolina Department of Corrections, Respondent.


Appellate Case No. 2017-001255

ORDER

Appellant has filed a petition to rehear the dismissal of this appeal. After careful consideration, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating this appeal. Accordingly, the petition is denied.


C.J.


J.


J.

Columbia, South Carolina

cc:
Clifton Lyles #294075
Kensley Collins, Esquire

FILED

September 14, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

Clifton Lyles, #294075..... Appellant,

v.

South Carolina Department of Corrections,..... Respondent.

MOTION FOR REHEARING

I, Clifton Lyles (Appellant), do hereby seek a rehearing of the order dismissing the appeal for "failure to pay the filing fee as required by Rule 203 of the South Carolina Appellate Court Rules", and the "Order of this Court dated July 13, 2017".

This 7 day of August, 2017

BY: Clifton Lyles #294075
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

Clifton Lyles, #294075..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

MEMORANDUM IN SUPPORT
OF MOTION FOR REHEARING

Appellant contends that he should be granted a rehearing on the dismissal of his motion to proceed inform a pauperis do to the court's failure to note the following:

CRIMINAL APPEAL

Appellant contends that the court failed to note that the issue he is attempting to appeal is part of a criminal appeal in-that it deals with an amendment of a penal statue.see 2016 amendment of the 2010 Omnibus Crime Bill, Act 154(H-3545), Effective April 21, 2016, amending S.C.Code Ann. §44-53-470. Because that Penal statue actually affects the length of criminal sentence that Appellant is required to serve, then it is a criminal appeal.

The Appellant's request to avoid the filing fee requirement and to proceed without payment of costs is permitted under South

Carolina law. In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court held that "in the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions." 471 S.E.2d at 134-135.

In the present case, there is a statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellant. Rule 203(d), SCACR, provides two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Because Appellant is appealing a criminal statute, then Rule 203(d)(1)(B)(iii) and Rule 240(d) allows for the filing fee to be waived.

LIBERTY INTEREST AND FUNDAMENTAL RIGHT

Appellant contends that he has a liberty interest in the amendment of the statute in that the effect of it would remove twenty (20) years off of his sentence. To restrict Appellant from pursuing this appeal because he can't afford to pay the filing fee denies him access to the courts, which is a denial of his fundamental right to due process. Boddie v. Connecticut, 401 U.S. 371 (1971) (In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that a prisoner has no assets and no means by which to pay the initial filing fee); 28 U.S.C. § 1915(b)(4).

SIGNIFICANT PUBLIC INTEREST

Appellant contends that this appeal involves significant public interest because it: (1) Prevents the fall out that occurred after the passing of the 2010 Omnibus Crime Bill that has the Department of Corrections saddled with several law suits after this courts ruling in Bolin v. S.C.Dept.of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct.App.2016); and (2) It will save all involved (i.e. Circuit courts, SCDC, Administrative Law Court, etc.) time and money by, by addressing the matter now opposed to hearing the appeals of the thousands affected, and will be affected in the near future.

CONCLUSION

This court should allow Appellant to proceed with out payment of the filing fee, and in forma pauperis.

This 7 day of August, 2017

BY: *Chandra 294075*
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

Clifton Lyles, #294075..... Appellant,

v.

South Carolina Department of Corrections,..... Respondent.

CERTIFICATE OF SERVICE

I, Clifton Lyles (Appellant), do hereby certify that I did serve the "MOTION FOR REHEARING" on the Respondent, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows:

OFFICE OF GENERAL COUNSEL
4444 BROADRIVER ROAD
COLUMBIA, S.C. 29221

This 7 day of August, 2017

BY: Clifton Lyles #294075

PRO SE

4344 BROADRIVER RD
COLUMBIA, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

Clifton Lyles, #294075..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

CERTIFICATE OF SERVICE

I, Clifton Lyles (Appellant), do hereby certify, that I did
serve the "MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING" on
the Respondent, by depositing a copy of the same in the U.S.

Mail, postage prepaid, and addressed as follows:

OFFICE OF GENERAL COUNSEL
4444 BROADRIVER RD
COLUMBIA, SOUTH CAROLINA 29221

This 7 day of August, 2017

BY: Clifton Lyles 294075
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

The South Carolina Court of Appeals

Clifton Lyles #294075, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001255

The Honorable S. Phillip Lenski
Trial Court Case No. 2016ALJ150667AP

ORDER

Appellant has failed to pay the filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, and the order of this Court dated July 13, 2017. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

Joy A. Kitchin
CLERK

Columbia, South Carolina

cc:

Clifton Lyles #294075

Christina Catoe Bigelow, Esquire

FILED

8-2-17

The South Carolina Court of Appeals

Clifton Lyles #294075, Appellant,

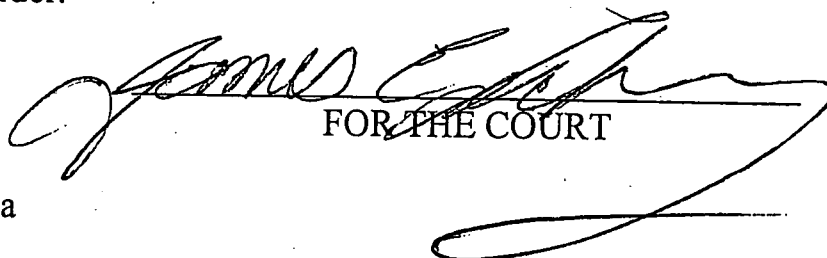
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001255

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.


FOR THE COURT

Columbia, South Carolina

cc:
Clifton Lyles #294075
Christina Catoe Bigelow, Esquire

FILED

July 13, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

Clifton Lyles, #294075..... Appellant,

v.

South Carolina Department of Corrections,..... Respondent.

INITIAL BRIEF ON APPELLANT

CLIFTON LYLES#294075
4344 BROADRIVER ROAD
COLUMBIA, S.C. 29210
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities.....2
Statement of Issues on appeal.....3
Statement of the Case.....4
Relevant facts.....4
Argument One.....5
Relevant Facts.....5
Discussion.....5,6,7 and 8
Conclusion.....8
Argument Two.....8
Relevant Facts.....8 and 9
Discussion.....9,10 and 11
Conclusion.....11

TABLE OF AUTHORITIES

Bolin v. South Carolina Dept. of Corrections, 781 S.E.2D 914(ct.app.2015)... 5

Hair v. State, 406 S.E.2D 332(S.C.1991)..... 7, 10

Howard v. Allen, 368 F.Supp. 310(1973)..... 6

Rainey v. State, 414 S.E.2D at 132(S.CT.1992)..... 10

State v. Bryant, 675 S.E.2D 816(ct.app.2009)..... 7

State v. Dupree, 583 S.E.2D 437(ct.app.2003)..... 10

State v. Hilton, 753 S.E.2D 549(S.C.2013)..... 6

STATUES

**OMNIBUS CRIME AND REDUCTION AND SENTENCING REFORM ACT OF 2010,
ACT 154(H-3545)..... 3, 4, 5, 6, 7, 8, and 10**

S.C.CODE ANN.§44-53-375..... 10

S.C.CODE ANN.§44-53-375(C)(1)(A)..... 8

S.C.CODE ANN.§44-53-470..... 5, 8, 9 and 10

S.C.CODE ANN.§44-53-470(A)(3)..... 9

S.C.CODE ANN.§44-53-470(B)..... 9

STATEMENT OF ISSUES ON APPEAL

ISSUE ONE: WHETHER APPELLANT'S SENTENCE SHOULD BE MODIFIED BASED ON THE STATUTORY CHANGES TO THE "OMNIBUS CRIME AND REDUCTION AND SENTENCING REFORM ACT OF 2010", ACT 154(H-3545); and

ISSUE TWO: WHETHER THE TRIAL JUDGE HAD SUBJECT MATTER JURISDICTION TO SENTENCE APPELLANT TO A TRAFFICKING CRACK COCAINE 3RD OFFENSE BASED ON PRIOR OFFENSES THAT EXCEEDED THE 10 YEAR TIME LIMITATION?

STATEMENT OF CASE

This case comes before the South Carolina Court of Appeals pursuant to the appeal of Clifton D. Lyles ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). Appellant filed a step one Grievance on July 7, 2016, claiming that his sentence should be re-calculated in compliance with the new amendment of the "Omnibus Crime and Reduction and Sentencing Reform Act of 2010", Act 154(H-3545). That grievance was investigated and denied when SCDC determined that the Amendment did not apply to Trafficking offenses. Appellant filed a step Two grievance on July 21, 2016. That grievance was also investigated and denied on August 19, 2016, stating that the step one grievance response was correct. Appellant then filed a notice of appeal in the Administrative Law Court on September 6, 2016. On May 12, 2017, the appeal was dismissed by the Honorable Judge S. Phillip Lenski, stating that the court lacked subject matter jurisdiction to hear Appellant's argument that his sentence should be modified based on recent statutory changes. Appellant subsequently filed a notice of appeal on June 8, 2017.

RELEVANT FACTS

The Honorable Administrative Law Judge, s. Phillip Lenski has wrongly interpreted Appellant's argument on appeal. He mistakenly states that "Appellant was challenging the offense level of his conviction...he argues that recent statutory law changes indicate that he should not have been convicted of a 3rd offense trafficking charge". see ORDER OF DISMISSAL DATED MAY 12, 2017, page 1, line 9-11.

ISSUE ONE: WHETHER APPELLANT'S SENTENCE SHOULD BE MODIFIED BASED ON THE STATUTORY CHANGES TO THE "Omnibus Crime and Reduction and Sentencing Reform Act of 2010", Act 154(H-3545)?

RELEVANT FACTS

On April 8, 2004, Appellant (Clifton Lyles) was found guilty of trafficking Crack Cocaine, third offense and sentenced to 30 years. On April 21, 2016, the General Assembly amended the 2010 Omnibus Crime Reduction and Sentencing Reform Act, by adding Act 154. In act 154, Section 44-53-470, the following language was added:

IN ADDITION TO THE ABOVE PROVISIONS, A CONVICTION OF TRAFFICKING IN MARIJUANA OR TRAFFICKING IN ANY OTHER CONTROLLED SUBSTANCE IN VIOLATION OF THIS ARTICLE OR OF ANOTHER STATE OR FEDERAL STATUTE RELATING TO TRAFFICKING IN CONTROLLED SUBSTANCES MUST BE CONSIDERED A PRIOR OFFENSE FOR PURPOSES OF ANY PROSECUTION PURSUANT TO THIS ARTICLE.

DISCUSSION

Plaintiff contends that the additions that was made to the drug enhancement statute was done as a means to effectuate the main purpose of the Omnibus Crime Bill. That purpose is to save taxpayer funds by shortening sentences for less serious offenses. See 2009-2010 Bill 1154: Omnibus Crime Reduction and Resentencing Reform Act, General Assembly's intent, Section 44:

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS IN PART II OF THIS ACT SHALL PROVIDE COST-EFFECTIVE PRISON RELEASE AND COMMUNITY SUPERVISION MECHANISMS AND COST-EFFECTIVE AND INCENTIVE-BASED STRATEGIES FOR ALTERNATIVES TO INCARCERATION IN ORDER TO REDUCE RECIDIVISION AND IMPROVE PUBLIC SAFETY.

In order to effectuate that purpose, the General Assembly amended the drug statutes to shorten non-violent drug offenders sentences. Bolin v. South Carolina Dept. of Corrections, 781 S.E.2D 914 (CT.App.2015) (Hence, one of the act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates

convicted of less serious offenses). Because the Crime Bill accomplished the General Assembly's intended purpose, it further amended the law by adding Act 154(H-3545), effective April 21, 2016.

This added language specifically talks about trafficking offenses and methods to use when sentencing an offender under this statute. It clearly mandates that in order to sentence a person with a second or subsequent offense, that person must have had a prior trafficking offense on his record. In other words, a court can no longer use a possession or distribution offense as a means to enhance a trafficking offense to a second or third offense.

What's more, is that this additional language that was added to Sections 8,9 and 10 of Act 154 is remedial and procedural in-that they: (1) create new remedies for existing rights; and (2) provide the courts with a method for enforcing those rights. State v. Hilton, 753 S.E.2D 549(S.C.2013) (A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability).

Because these new additions to the statute are remedial and procedural, they must be given retroactive effect. Howard v. Allen, 368 F.Supp. 310(1973) (While it may be said that statutes relating to remedies or procedures may be given a retroactive operation, a statement of the rule perhaps more accurate is that statutes merely affecting the remedy or law of procedure apply to actions begun after their passage, whether the right of accrued before or after the change in the law, at least in the absence of a constitutional or statutory provision to the contrary).

But also, because this additional language that was added to Sections 8, 9 and 10 did not change or take away any of the existing language or rights that was there prior to Act 154's passing, then they were neither amended nor repealed. And because the statutes were neither repealed or amended, then the "Savings Clause" that was put in the Act in Section 12 does not apply. State v. Bryant, 675 S.E.2D 816 (ct.app.2009) (Statutory amendment providing for admission of video taped interviews of child sexual abuse victims was an addition to the existing statutory scheme, and therefore savings clause accompanying the enactment of amendment did not prohibit the application of amendment to defendant's pending sex offense prosecution; amendment did not repeal or amend existing law). ~~Because those additions were Penal in nature, then they must be construed strictly against the state.~~ Hair v. State, 406 S.E.2D 332 (S.C.1991) (When statute is penal in nature, it is construed strictly against state and in favor of defendant). Therefore, the provision in Act 154 must be applied to all trafficking offenses.

APPLICATION TO APPELLANT

On April 8, 2004, Appellant was found guilty of trafficking Crack Cocaine 3rd offense, Ten or more, but less than twenty-eight grams. At the time of the conviction, Appellant did not have a prior trafficking Crack cocaine first or second on his record. His record only consisted of three possession of cocaine offenses that occurred in 1992, and one intent to distribute cocaine in 1991. All four of those offenses were consolidated to one offense as part of a plea deal taken in 1992.

Also, Appellant had a 2002 marijuana conviction on his record. Under Act 154, §44-53-470's added language, none of Appellant's prior offenses qualify as a means to enhance a "trafficking offense" as they are not "trafficking offenses" themselves. This then, means that under Act 154's retroacted effect, Appellant's sentence must be modified to reflect a first offense trafficking ten or more, but less than twenty-eight grams. Under a first offense, Appellant could only be sentenced to 3 to 10 years, non-violent. See §44-53-375(C)(1)(A).

SUBJECT MATTER JURISDICTION TO EFFECT SENTENCE

Appellant contends that because the General Assembly did not specifically mention any mandate that to benefit from Act 154, that an inmate had to petition the court or a judge, then it must be inferred that the authority was given to the Department of Corrections to screen out the individuals whom are eligible to reap the benefits of the Act and modify there sentences.

CONCLUSION

Appellant's sentence should be modified to reflect 3 to 10 year non-violent sentence and he should be given his immediate release.

ISSUE TWO: WHETHER THE TRIAL JUDGE HAD SUBJECT MATTER JURISDICTION TO SENTENCE APPELLANT TO A TRAFFICKING CRACK COCAINE 3RD OFFENSE BASED ON PRIOR OFFENSES THAT EXCEEDED THE 10 YEAR TIME LIMITATION?

RELEVANT FACTS

On April 8, 2004, Appellant was tried and found guilty of trafficking crack cocaine 3rd offense, 10 or more, but less than 28 grams. He was sentenced to 30 years. The Solicitor presented the judge with Appellant's prior criminal record which

consisted of one 1991, felony possession of cocaine; one 1992, possession with intent to sell or distribute cocaine; one 1992, felony possession of cocaine; and one 1992, possession with intent to sell or distribute cocaine, all of which occurred in North Carolina. All of those offenses were consolidated into one offense as part of a plea deal, in-which Appellant received an 8 year sentence. He was paroled in 1993 on those charges. His parole was revoked in 1994. he was paroled again later in 1994. As far as South Carolina, Appellant had two conviction for possession of marijuana, which was used for a third offense. See EXHIBIT B, TRIAL TRANSCRIPT, PAGE 412, LINE 21-PAGE 413 LINE 12.

DISCUSSION

Petitioner contends that the trial judge was without "Subject Matter Jurisdiction" to sentence to a trafficking crack cocaine 3rd offense, 10 or more, but less than 28 grams, with prior offenses that were all over 10 years old.

Under S.C. Code §44-53-470, any prior convictions used to enhance a first to a second or subsequent offense, must not exceed a ten year time limit. §44-53-470(A)(3), states in pertinent part "...for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within previous ten years of a first violation of a controlled substance offense provision...".

Appellant's prior convictions took place in 1992 and he was released from confinement in 1993, thereby disqualifying them from being used to enhance the 2004 trafficking convictions. §44-53-470(B): If a person is sentenced to confinement as the result

of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later.

In 2004, §44-53-470 did not specify what it meant by release from confinement, which is why in Act 154, the General Assembly at that time identified it to mean when a person has completed "...parole...". So, because the 2004 version of the statute did not contain that language, then it must be construed that Appellant's 1993 release was the the tolling date for the enhancement statute. Hair v. State, 406 S.E.2D 332(S.C.1991)(When statute is penal in nature, it is construed strictly against state and in favor of defendant).

What's more, is that the marijuana offense could not be used either because at the time Appellant caught the trafficking charge, 2002, §44-53-375 and 44-53-470 were in conflict over whether or not marijuana was a narcotic drug that could be used to enhance a cocaine charge. Rainey v. State, 414 S.E.2D at 132(S.-C.1992). So, because §44-53-470 was not amended until 2003, State v. Dupree, 583 S.E.2D 437(CT.App.2003), then it was barred by the 14th amendment's ex post facto clause from being applied to Appellant's case because it was not proper law at the time Appellant caught the trafficking charge.

So, for the above mentioned reasons, the trial court was with-out subject matter jurisdiction to convict or sentence Appellant as a 3rd offender. The court only had proper evidence and jurisdiction to sentence Appellant as a first offender, which only allow for a 3 to 10 non-violent sentence to be levied.

So, because Appellant has already served almost 13 years, which is twice the amount of time that he should have properly served, then his sentence is complete.

conclusion

Appellant should be given his immediate release and what ever other remedy that this Honorable court deems appropriate

THIS 13 DAYE OF JULY, 2017

BY: Alton Taylor 294076
PRO SE
4344 BROADRIVER ROAD
COLUMBIA, S.C. 29210

(EXHIBIT A)
ORDER OF DISMISSAL, DATED MAY 12, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clifton Lyles, #294075,

Docket No. 16-ALJ-15-0667-AP

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

ORDER OF DISMISSAL

FILED

MAY 12 2017

SC ADMIN. LAW COURT

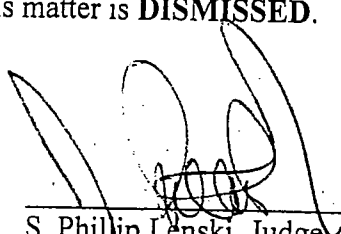
This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Clifton Lyles (Appellant), an individual incarcerated with the South Carolina Department of Corrections (Department). The Appellant seeks review of the Department's Step 2 decision regarding the Appellant's sentence. The Appellant argues that his sentenced should be modified based on recent statutory changes. Upon review of the Appellant's arguments, the court dismisses this matter for lack of subject-matter jurisdiction. "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (citations omitted).

In this case, the Appellant is challenging the offense level of his conviction. He argues that recent statutory law changes indicate that he should not have been convicted of a 3rd offense trafficking charge. While this court has jurisdiction to review the calculation of a sentence, it does not have authority to modify the sentence itself. This court reviews only the actions of state agencies, like the Department, and not Circuit Court judges. *See Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Env'tl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259-60, 531 S.E.2d 507, 508-09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al Shabazz*). Issues pertaining to the validity of the conviction, and not to sentence calculation, must be addressed through the post-conviction relief process via the Circuit Court. *See S.C. Code Ann. § 17-27-10, et seq.* This court can only review the Appellant's case to determine if the Department

is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007). Because the Appellant has not raised any issues within the Department's purview, this matter should be dismissed for lack of subject-matter jurisdiction. *See McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (citation omitted) ("The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.").

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED**.
AND IT IS SO ORDERED.



S. Philip Lenski, Judge
S.C. Administrative Law Court

May 12, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE
I, the undersigned, hereby certify that on this date
I have caused to be served upon the above entitled person, Jackson
the original of the cause or, by depositing a copy thereof,
with the State's Postage paid, or to the emergency
address, as addressed to the parties of the cause.
12/11

Judge, Clerk

(EXHIBIT B)
TRIAL TRANSCRIPT

1 JURORS WHEN YOU BEGAN DELIBERATIONS. AT THIS POINT IN
2 TIME IT IS PERMISSIBLE TO DISCUSS THIS MATTER WITH ANYONE
3 YOU CHOOSE TO, OR YOU CAN CHOOSE NOT TO. I WANT TO THANK
4 YOU VERY MUCH FOR THE COURT AND FOR THE PEOPLE OF THE
5 COUNTY OF YORK FOR YOUR SERVICE. THIS COMPLETES YOUR
6 SERVICE FOR THE WEEK.

7 THANK YOU AGAIN FOR YOUR SERVICE. YOU DID SERVE
8 HONORABLY AND WELL FOR THE COUNTY OF YORK AND FOR THE
9 STATE. YOU CANNOT BE CRITICIZED FOR YOUR SERVICE IN THIS
10 CASE. I ASK THAT EVERYONE REMAIN SEATED FOR THE JURY TO
11 RETIRE.

12 NORMALLY, I WOULD GIVE YOU THE OPTION OF STAYING TO
13 SEE THE SENTENCING OF THE DEFENDANT, BUT SINCE THE
14 DEFENDANT IS NOT PRESENT, THE SENTENCE WILL BE SEALED AND
15 ONLY OPENED WHEN HE IS PRESENT IN COURT. THERE WILL NOT
16 BE A SENTENCING TAKING PLACE PUBLICLY IN THIS CASE.

17 AT THIS POINT IN TIME, I THANK YOU AND I ASK
18 EVERYONE TO REMAIN SEATED AS YOU RETIRE.

19 (WHEREUPON THE JURY EXITED THE COURTROOM)

20 ANYTHING FURTHER FROM THE STATE?

21 MS. WEAVER: YES, YOUR HONOR. I'D LIKE TO PUT THE
22 DEFENDANT'S PRIOR RECORD INTO THE RECORD.

23 THE COURT: ALL RIGHT, MA'AM.

24 MS. WEAVER: IN 1998, HE PLEAD TO ASSAULT WITH A
25 DEADLY WEAPON. THAT WAS A MISDEMEANOR CHARGE IN NORTH

1 CAROLINA. IN 1995, HE PLEAD TO TWO COUNTS OF LARCENY IN
2 NORTH CAROLINA. IN 1991, FELONY POSSESSION OF COCAINE.
3 IN 1992, POSSESSION WITH INTENT TO SELL OR DISTRIBUTE
4 COCAINE. ALSO, IN 1992, FELONY POSSESSION OF COCAINE.
5 IN 1992, POSSESSION WITH INTENT TO SELL OR DISTRIBUTE
6 COCAINE. DRIVING WHILE LICENSE PERMANENTLY REVOKED.

7 YOUR HONOR, I WANT TO NOTE FOR THE COURT HE WAS
8 GIVEN AN EIGHT-YEAR SENTENCE ON SOME OF THOSE CHARGES.
9 HE WAS PAROLED IN 1993. AND AGAIN, HIS PAROLE WAS
10 REVOKED IN '94. HE WAS PAROLED AGAIN LATER IN '94.

11 AS FAR AS SOUTH CAROLINA, TWO CONVICTIONS FOR
12 POSSESSION OF MARIJUANA, THIRD OFFENSE; DRIVING UNDER
13 SUSPENSION; IMPROPER VEHICLE LICENSE; PUBLIC DISORDERLY
14 CONDUCT; AND USE OF ANOTHER'S DRIVER'S LICENSE OR ALTERED
15 LICENSE. THAT WAS IN 2002.

16 AND, YOUR HONOR, I WANT TO POINT OUT FOR THE COURT
17 THIS IS A THIRD OFFENSE.

18 THE COURT: I'LL BE HAPPY TO HEAR FROM THE DEFENSE.

19 MR. SHADD: YOUR HONOR, THIS IS THE FIRST TIME I'VE
20 HAD TO TRY A CASE WHERE THE DEFENDANT ISN'T HERE. ARE
21 YOU PLANNING ON SENTENCING HIM NOW, AND THEN SEALING IT?

22 THE COURT: YES SIR. THE SENTENCE WILL BE OPENED
23 WHEN HE LOCATED AND RETURNED TO THE COURT.

24 MR. SHADD: OKAY.

CERTIFICATE OF SERVICE

I, Clifton D. Lyles(Appellant), do hereby certify that I did serve the "INITIAL BRIEF OF APPELLANT" on the Respondent, by depositing a copy of the same in the U.S. Mail, addressed as follows:

OFFICE OF GENERAL COUNSEL
P.O.BOX 21787
4444 BROADRIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221-1787

THIS 13 DAY OF JULY, 2017

BY: Clifton D. Lyles 294075
PRO SE
4344 BROADRIVER ROAD
COLUMBIA, S.C. 29210

THE SUPREME COURT OF SOUTH CAROLINA

APPELLATE CASE NO.2017-001994

CLIFTON LYLES, #294075, APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDANT.

PROOF OF SERVICE

I, Clifton Lyles (Appellant), do hereby, promise that I did serve the "PETITION FOR WRIT OF CERTIORARI" on the following by depositing the same in the U.S. Mail, postage prepaid, as addressed below:

MELISSA J. ARNOLD
STAFF ATTORNEY
SOUTH CAROLINA DEPT. OF CORR.
P.O. BOX 21787/4444 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221-1787

THE HONORABLE JENNY A. KITCHINGS
CLERK OF COURT
S.C. COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, S.C. 29211

This 18 day of October, 2017

BY: Clifton Lyles #294075
PRO SE
1578 CLARENCE COCKER HWY
TURBEVILLE, S.C. 29162

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

Case No. 16-ALJ-04-0667-AP
Appellate Case No. 2017-001255

CLIFTON LYLES, #294075.....Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....Respondent.

INITIAL BRIEF OF RESPONDENT

September 18, 2017

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

MELISSA J. ARNOLD
SC Bar 101663
Staff Attorney
Office of General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-1278

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT AND CITATION OF AUTHORITY.....4

**THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE
APPEAL BECAUSE IT DID NOT HAVE SUBJECT MATTER
JURISDICTION.....4**

CONCLUSION.....6

CERTIFICATE OF SERVICE.....7

TABLE OF AUTHORITIES

I. STATUTES

S.C. Code Ann. § 1-23-610.....3
S.C. Code Ann. § 1-23-380.....3

II. CASES

Al-Shabazz v. State, 338 S.C. 354 (2000).....4
DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416 (Ct. App. 2004).....4
Lake v. Reeder Constr. Co., 330 S.C. 242 (Ct. App. 1998).....3
Sullivan v. SCDC, 355 S.C. 437 (2003)4
State v. Bennett, 375 S.C. 165 (Ct. App. 2007).....5

STATEMENT OF THE ISSUE ON APPEAL

**THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE
APPEAL BECAUSE IT DID NOT HAVE SUBJECT MATTER
JURISDICTION.**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Clifton Lyles (Appellant) an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Respondent).

Appellant filed a Step One Grievance on July 7, 2016 claiming Respondent should modify his sentence in light of recent statutory changes. (R.p. ____). Respondent investigated and denied Appellant's grievance. (R.p. ____). Appellant filed a Step Two Grievance on July 21, 2016. (R.p. ____). SCDC made the final agency determination denying the Appellant's grievance on August 19, 2016. (R.p. ____).

Thereafter, Appellant filed a Notice of Appeal with the ALC on September 6, 2016, contending that his sentence should be modified pursuant to the 2010 Omnibus Crime Reduction and Sentencing Reform Act. (R.p. ____). The ALC dismissed Appellant's case, holding that because Appellant seeks modification of his sentence, the ALC did not have subject matter jurisdiction to hear the case. (R.p. ____).

Appellant now seeks review of the ALC's decision. For the reasons that follow, SCDC respectfully requests that this Court affirm the ALC's decision.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-380(5); *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.* In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC

reached. *DuRant v. S.C. Dep't of Health & Environmental Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Id.*

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE APPEAL IT DID NOT HAVE SUBJECT MATTER JURISDICTION.

The ALC's jurisdiction to hear inmate appeals is derived entirely from the decision of the South Carolina Supreme 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. Subsequently, the Supreme 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 *Sullivan*, the 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.

The ALC correctly dismissed this appeal because Appellant does not contend that Respondent has erroneously calculated his sentence, sentence-related credits, or custody status. Rather, Appellant challenges the offense level of his conviction. Appellant claims that the 2010 Omnibus Crime Reduction and Sentencing Reform Act and other statutory changes

mean that his 2004 sentence for Trafficking in Crack Cocaine, third offense, should be modified. In its decision, the ALC properly noted that "while it has jurisdiction to review the calculation of a sentence, it does not have authority to modify the sentence itself." (R.p. ___). The ALC may only review Appellant's case to determine if Respondent properly enforced Appellant's sentence, pursuant to the trial court's order and the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170 (Ct. App. 2007). Accordingly, the ALC does not have subject matter jurisdiction and properly dismissed the appeal.

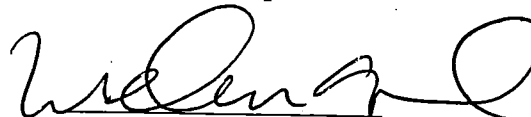
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Melissa J. Arnold
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-1278

Columbia, SC
September 18, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0667-AP
Appellate Case No. 2017-001588

CLIFTON LYLES, # 294075,

APPELLANT,

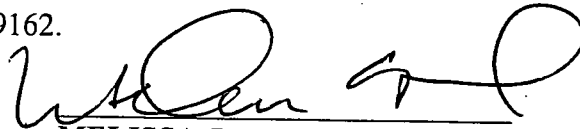
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, September 18, 2017, she mailed a copy of the **Initial Brief of Respondent** to Appellant via U.S. Mail addressed as follows: **Clifton Lyles, # 294075**, Turbeville Correctional Institution, 1578 Clarence Coker Highway, Turbeville, South Carolina, 29162.



MELISSA J. ARNOLD
Staff Attorney
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-1943

September 18, 2017

So, because Appellant has already served almost 13 years, which is twice the amount that he should have properly served, then his sentence is complete.

CONCLUSION

Appellant should be given his immediate release.

THIS 25th DAY OF MAY, 2017

BY: Clifton Lyles 294075
PRO SE
4848 GOLDMINE HIGHWAY
KERSHAW, S.C. 29067

CERTIFICATE OF SERVICE

I, Clifton Lyles (Appellant), do hereby this motion, certify that I did on this day, serve the "MEMORANDUM AND BRIEF IN SUPPORT OF MOTION AND NOTICE OF APPEAL FROM THE ORDER OF DISMISSAL OF THE HONORABLE S. PHILIP LENSKI" on the Respondent, by depositing the same in the U.S. Mail, addressed as follows:

OFFICE OF GENERAL COUNSEL
P.O. BOX 21787/4444 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221-1787

ON THIS 25th DAY OF MAY, 2017.

BY: Clifton Lyles 294075
PRO SE
4848 GOLDMINE HIGHWAY
KERSHAW, S.C. 29067

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clifton Lyles, #294075,

Docket No. 16-ALJ-15-0667-AP

Appellant,

vs.

ORDER OF DISMISSAL

South Carolina Department of Corrections,

FILED

Respondent.

MAY 12 2017

ADMIN. LAW COURT

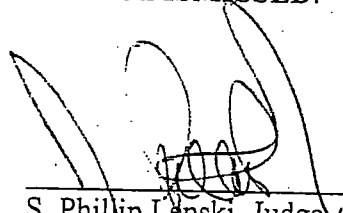
This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Clifton Lyles (Appellant), an individual incarcerated with the South Carolina Department of Corrections (Department). The Appellant seeks review of the Department's Step 2 decision regarding the Appellant's sentence. The Appellant argues that his sentence should be modified based on recent statutory changes. Upon review of the Appellant's arguments, the court dismisses this matter for lack of subject-matter jurisdiction. "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (citations omitted).

In this case, the Appellant is challenging the offense level of his conviction. He argues that recent statutory law changes indicate that he should not have been convicted of a 3rd offense trafficking charge. While this court has jurisdiction to review the calculation of a sentence, it does not have authority to modify the sentence itself. This court reviews only the actions of state agencies, like the Department, and not Circuit Court judges. See *Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Env'tl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259-60, 531 S.E.2d 507, 508-09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al Shabazz*). Issues pertaining to the validity of the conviction, and not to sentence calculation, must be addressed through the post-conviction relief process via the Circuit Court. See S.C. Code Ann. § 17-27-10, *et seq.* This court can only review the Appellant's case to determine if the Department

is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007). Because the Appellant has not raised any issues within the Department's purview, this matter should be dismissed for lack of subject-matter jurisdiction. *See McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (citation omitted) ("The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.").

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED**.
AND IT IS SO ORDERED.

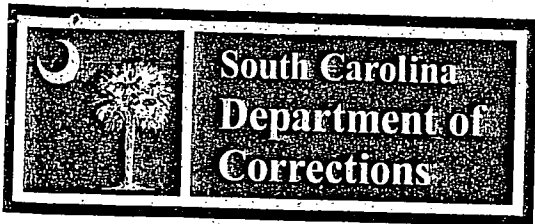


S. Phillip Lenski, Judge
S.C. Administrative Law Court

May 12, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE
I, the undersigned, hereby certify that a true and correct copy of the foregoing order of the Administrative Law Court has been filed with the South Carolina State Archives and Records Administration, Department of Archives and Records, 1000 North Main Street, Columbia, South Carolina 29201, and that a true and correct copy of the same has been furnished to the parties to the proceedings herein.

[Signature]



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

January 19, 2017

The Honorable S. Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Clifton D. Lyles, #294075, vs. SCDC
Docket No. 16-ALJ-04-0667-AP

Dear Judge Lenski:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Clifton D. Lyles, #294075
File

limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's state created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 S.E.2d 124 (2003).

In this case, Appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On April 8, 2004, Appellant was sentenced to thirty years' incarceration for a third offense of Trafficking in Cocaine. See Exhibit A. Appellant argues that his sentence should be recalculated because of *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 781 S.E.2d 914, (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016), however this is not correct. *Bolin* affected drug distribution, manufacturing, and possession with intent to distribute charges. *Id.* Appellant's sentence for Trafficking in Cocaine, third offense, was not affected by *Bolin*.

Appellant additionally argues his sentence should be recalculated because of recent changes to S.C. Code Ann. § 44-53-470. Appellant's argument is manifestly without merit. SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets." *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014). Appellant's sentencing sheet, which was filed with the Record, is in no way ambiguous. See also Exhibit A. Appellant was clearly sentenced for Trafficking in Cocaine, *third offense*. *Id.* emphasis added. SCDC cannot change an inmate's clearly written on the sentencing sheet by the sentencing judge. *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 759 S.E.2d 398 (2014), *reh'g denied* (July 10, 2014). As there is no ambiguity in the sentencing sheet, SCDC has applied a term of incarceration of thirty years. See Exhibit B.

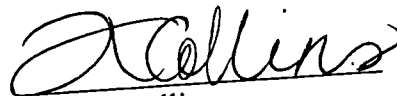
Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying Appellant's Step Two Grievance be upheld.

CONCLUSION

**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See *Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

Respectfully submitted,



Kensey Collins
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

January 19, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 ADMINISTRATIVE LAW COURT)
 CLIFTON LYLES,)
 PLAINTIFF,)
 VS.)
 S.C. DEPT. OF CORR.,)
 RESPONDANT.)

BRIEF IN COMPLIANCE WITH
 S.C.A.L.C., RULE 60

ISSUE ON APPEAL

DOES THE NEW AMENDMENT OF THE 2010 OMNIBUS CRIME REDUCTION AND RE-SENTENCING ACT, ACT 154, (H-3545), SECTION 8§44-53-370, SECTION 9§44-53-375 AND SECTION 10§44-53-470 APPLY RETROACTIVELY TO ALL DRUG SENTENCES?

RELEVANT FACTS

On april 8,2004, Clifton Donell Lyles was found guilty of Trafficking Crack Cocaine Third offense and sentenced to 30 years. On April 21,2016, the General Assembly amended the 2010 Omnibus Crime Reduction and Sentencing Reform Act, by adding Act 154. In act 154,Section 44-53-470 the following language was added:

~~IN ADDITION TO THE ABOVE PROVISIONS, A CONVICTION OF TRAFFICKING IN MARIJUANA OR TRAFFICKING IN ANY OTHER CONTROLLED SUBSTANCE IN VIOLATION OF THIS ARTICLE OR OF ANOTHER STATE OR FEDERAL SIMILE RELATING TO TRAFFICKING IN CONTROLLED SUBSTANCES MUST BE CONSIDERED A PRIOR OFFENSE FOR PURPOSES OF ANY PROSECUTION PURSUANT TO THIS ARTICLE.~~

DISCUSSION

Plaintiff contends that the additions that was made to these three drug statues were done as a means to effectuate the main purpose of the Omnibus Crime Bill. That purpose is to save taxpayer funds by shortening sentences for less serious offenses. see 2009-2010 Bill 1154:Omnibus Crime Reduction and Resentencing Reform Act,General Assembly's intent,Part II,Section 44: It is the intent of the General Assembly that the provisions in Part II of this Act shall provide cost-effective prison release and community supervision mechanisms and cost-effective and incentive-based strategies for alternatives to incarceration in order to reduce recidevision and improve public safety.

In order to effectuate this purpose, the General Assembly amended the drug statutes to shorten non-violent drug offenders sentences. Bolin v. South Carolina Dept. of Corrections, 781 se2d 914(ct.app.2015)(Hence, one of the act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses). And because the Crime Bill accomplished the intended purpose of the General Assembly, it further amended the law by adding Act 154(H-3545), effective April 21, 2016.

Under Act 154, Section 8§44-53-370, Section 9§44-53-375 and Section 10§44-53-470, each section added additional language concerning prior history considerations, the bulk of which appears in section 10, §44-53-470 as follows:

In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substances in violation of this article or of another state or federal statute relating to violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

This added language specifically talks about trafficking offenses and method to use when sentencing an offender under this statute. It clearly mandates that in order to sentence a person with a second or subsequent offense, that person must have had a prior trafficking offense on his record. In other words, a court can no longer use a possession or distribution offense as a means to enhance a trafficking offense to a second or third offense.,

Also, this additional language that was added to sections 8, 9 and 10 of Act 154 is remedial and procedural in that they (1) create new remedies for existing rights; and (2) provide the courts with a method for enforcing rights. State v. Hilton, 753 se2d 549(s.c.2013)(A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability).

Because these new additions to the statute are remedial and procedural, they must be given retroactive effect. Howard v. Allen, 368 F.Supp. 310(1973)(While it may be said that statutes

relating to remedies or procedures may be given a retroactive operation, a statement of the rule perhaps more accurate is that statutes merely affecting the remedy or law of procedure apply to actions begun after their passage, whether the right of accrued before or after the change in the law, at least in the absence of a constitutional or statutory provision to the contrary).

What's more, is that, because this additional language that was added to sections 8,9 and 10 did not change or subtract any of the existing languang or rights that was in them prior to Act 154's passing, then they were neither amended nor repealed. And because the statutes were neither remanded or repealed then the "Savings Clause" that was put in the act in Section 12 does not apply. State v. Bryant, 675 se2d 816(ct.app.2009)(Statutory amendment providing for admission of video taped interviews of child sexual abuse victims was an addition to the existing statutory scheme, and therefore savings clause accompanying the enactment of amendment did not prohibit the application of amendment to defendant's pending sex offense prosecution; amendment did not repeal or amend existing law).

Therefore, the provision in Act 154 must be applied to all trafficking offenses. In Plaintiffs particular case, he was sentenced to trafficking third offense under §44-53-375(c)(1)(c). Under the new Act, Plaintiff no longer fit the criteria of §44-53-375(C)(1)(C) because he does not have a prior first or second offense of trafficking controlled sustances on his record. In truth, this is Plaintiff's first offense of trafficking, thereby requiring his sentence to be modified to reflect the criteria of §44-53-375(C)(1)(A), which would be 3 to 10 years, non-violent

CONCLUSION

Plaintiff's sentence should be recalculated in accords to trafficking first offense under §44-53-375(C)(1)(A), which carries 3 to 10 years non-violent and given his **IMMEDIATE RELEASE**.

STATE OF SOUTH CAROLINA)
ADMINISTRATIVE LAW COURT)
CLIFTON LYLES,)
PLAINTIFF,)

CERTIFICATE OF SERVICE

VS.

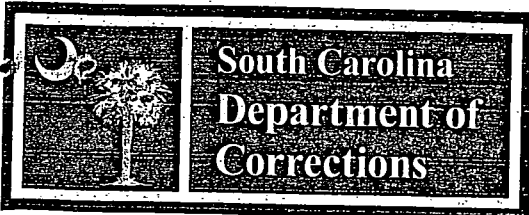
S.C. DEPT. OF CORR.,)
RESPONDANT.)

I, Clifton (Plaintiff), do certify that I did serve the "brief" in compliance with S.C.A.L.C., Rule 60, by depositing the same in the U.S. Mail addressed as follows:

OFFICE OF GENERAL COUNSEL
4444 BROADRIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221

THIS _____ DAY OF _____ 2016.

BY: _____.



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

November 23, 2016

The Honorable S. Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Reference: Inmate Clifton D. Lyles, #294075, vs. SCDC
Docket No. 16-ALJ-04-0667-AP

Dear Judge S. Phillip Lenski:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance KRCI 948-16, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Clifton D. Lyles, #294075
File

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

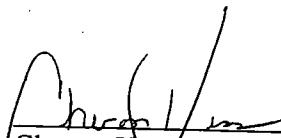
<http://www.doc.sc.gov> E-mail: corrections.info@doc.sc.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Clifton D. Lyles
Inmate Number: 294075
Kershaw Correctional Institution
Dorm-Room-Bunk: SA-0064-B

Columbia, South Carolina
November 23, 2016


Cheron Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

RECEIVED
7/25/16
Office Use Only
KCC-0948 16

INMATE NAME: CLIFTON LYLES
 SCDC NUMBER: 294075
 INSTITUTION: KERSHAW CORRECTIONAL
 HOUSING UNIT: SYCAMORE-A-64
 WORK ASSIGNMENT: LAW LIBRARY

JUL 22 2016

RECEIVED

AUG 08 2016

INMATE GRIEVANCE

Division of Grievance No. _____
 & Inmate Code: General _____
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received: 7/25/16
 IGC Initials: KL

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The Warden has mis-interpreted House-bill 3545's amendment to the 2010 Omnibus Crime reduction and resentencing Act, S44-53-375 and Gen, 44-53-470(B) which specifically addresses Trafficking by stating: "In addition to the above provisions a conviction of Trafficking in marijuana or Trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

Under this section, which deals with enhancing a charge from a first to a second or third states that in doing so, that a prior trafficking offense must be considered. Also, because this amendment is both Remedial and Procedural, it must be Retro-actively applied to Trafficking offenses. see State v. Bryant, 675 SE2D 816 (Ct.App.2009)

Clifton Lyles 7-21-16
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that your sentence calculation is incorrect. You further stated that you are entitled to "immediate release in view of the 2010 Omnibus Crime and Reduction and Sentencing Reform Act, as amended by Act 154 (H-3545), effective April 21, 2016." The Warden responded to your concern on SCDC Inmate Grievance Form Step 1 dated July 19, 2016. Your sentence calculation has been reviewed by local SCDC Staff at Kershaw Correctional Institution. You have not provided any evidence to support a different determination.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Justin D. Bryan 8/19/16
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

 Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1 JUL 11 2016

0854-14

INMATE NAME: CLIFTON LYLES (m)

SCDC NUMBER: 294075

INSTITUTION: KERSHAW

HOUSING UNIT: SYCAMORE-A-64

WORK ASSIGNMENT: LAW LIBRARY

OFFICE USE ONLY

Grievance No. 40 KRCT-0948-110

Code: General

Policy: _____

Disc. Hear: _____

Class:

PREA: _____

Date Received: 7/12/16

IGC Initials: ML

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) My grievance is based on the amendment to the 2010 Omnibus Crime and Reduction and Sentencing Reform Act, as amended by Act 154(H-3545), effective April 21, 2016. In this bill, at section Nine, 44-53-375 and Section Ten, 44-53-470(B) it states "...statute relating to Trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.". In other words, a Trafficking offense cannot be enhanced to a second or subsequent offense unless a person had prior "Trafficking" offenses. No longer can a possession or distribution be used to enhance a first offense trafficking to a second or subsequent offense.

Because this amendment of the 2010 crime and re-sentencing bill was RETROACTED, then it does apply to my sentence. And because my record does not consist of any prior "Trafficking" offense, then my sentence should be reduced to reflect a Three to Ten year sentence, as is the maximum allowed under the status. see S.C.Code Ann. §44-53-375(C)(1). Therefore, my sentence should be deemed expired, and I should receive my immediate release.

As an informal resolution I submitted a request and complaint on the Kiosk. see Kiosk #16-170258, author #016464

Clifton Lyles 7-7-16
Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

IGC conferred with case manager, MRS. YORK. See Warden's Response
P. Nough 7/15/16
IGC Signature Date

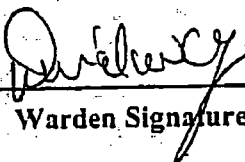
(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Lyles;

This is in response to KRCI-0948-16. All pertinent information and documentation has been reviewed. Nothing has been found to substantiate your allegation that you are entitled to have your sentence recalculated. Case Manager, Mrs. York was contacted and indicated you were advised appropriately on kiosk reference number 16-170258 that the Bill you mentioned does not apply to trafficking offenses. You have failed to provide any proof/evidence that verifies you should be released immediately.

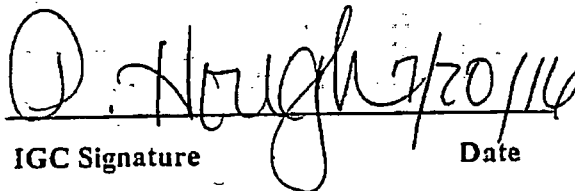
Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

 7/19/16
Warden Signature Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

 7-20-16
Grievant Signature Date

 7/20/16
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE VS.

CLIFTON D. LYLES

AKA:

Race: B Sex: M Age: 34

DOB: SS#:

Address:

DL#: SC01415880 SID#: SC01415880

IN THE COURT OF GENERAL SESSIONS
INDICTMENT CASE#

2007-GS-46-2950

#3

A/W#: H061001

Date of Offense: 08-21-2002

S.C. Code § 44-53-375

CDR Code #: 0452

CASE RESTORED

SENTENCE

PLEA TRIAL

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Trafficking Crack Cocaine 2nd Offense (10-28 grams)

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0451

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

David W. Water
Solicitor

Solicitor

Clifton D. Lyles
Defendant

Defendant

James Shultz
Attorney for Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is given credit for time served pursuant to S.C. Code § 24-23-40 to be calculated and applied by the
State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 - (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Surcharge) _____ \$ 100.

§ 14-1-211(A)(2) (Surcharge) _____ \$ _____

§ 56-5-2995 (DUI Assessment) _____ \$ _____

3% to County (if paid in installments) _____ \$ _____

TOTAL _____ \$ 100.

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

David Hamletta
Clerk of Court/Deputy Clerk

CERTIFIED PRESIDING JUDGE

COPY OF ORIGINAL _____
Judge Code: 0101418

INSTRUMENT WHICH IS ON FILE IN THIS OFFICE. Sentence Date: 6-16-03

Court Reporter: *Phyllis Barnett*

SCCA/217 (3/2003)

THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

COMMITMENT
WARRANT / TICKET #G391279 ✓
INDICTMENT #02 GS46 1441

#2

BY D. S. TENNYSON, SR., MAGISTRATE IN AND FOR YORK COUNTY,
SOUTH CAROLINA.

TO ANY LAWFUL OFFICER AND TO THE KEEPERS OF THE YORK COUNTY
DETENTION CENTER IN YORK COUNTY.

THESE ARE TO COMMAND YOU FORTHWITH TO CONVEY AND DELIVER
INTO CUSTODY OF THE SAID DETENTION CENTER THE BODY OF CLIFTON
DONNELL LYLES CHARGED BEFORE ME ON 08/15/02 AND DID PLEAD
GUILTY OF POSSESSION OF MARIJUANA AND YOU, THE SAID KEEPER, ARE
REQUIRED TO RECEIVE THE SAID CLIFTON DONNELL LYLES INTO YOUR
CUSTODY IN THE SAID YORK COUNTY DETENTION CENTER, AND THERE
SAFELY KEEP UNTIL HE BE THENCE DELIVERED BY DUE COURSE OF LAW.

SENTENCE OF THE COURT: ONE YEAR OR (\$851.04) TO PURGE

GIVEN UNDER MY HAND AND SEAL, AT YORK, SOUTH CAROLINA.

D. S. Tennyson Sr.
MAGISTRATE
YORK TOWNSHIPS
MOSS JUSTICE CENTER
803-628-3095

18/26/02

SERVED:
BY:

RETURN ONE COPY TO
CLERK OF COURT

COMMITMENT
STATE OF SOUTH CAROLINA
COUNTY OF YORK

VS.

CLIFTON DONNELL LYLES
108 AUTUMN PLACE
YORK, SC 29745

DEFENDANT INFORMATION

SEX: MALE
RACE: BLACK
DOB: 03/12/69
SSN: 242-17-9959

SERVED

Don Farris

6-16-03

Inmate Request

Today's Date: 7/14/16 15:34

Name: LYLES, CLIFTON D.
 Booking #: 294075
 Permanent #: 294075

Reference #: 16-170258

Date Requested: 06/09/16 17:14

Request Type: Classification

Requested By: Kiosk

Request Details: I am writing to request that my sentence be re-calculated as defined by act 154 -h.3545 amendment of the 2010 omnibus crime and resentencing bill, effective date April 21, 2016. In this act, under sc.code ann. section 44-53-470 B, which is the drug enhancement statute, it states that -any use of this section to sentence someone for trafficking second or third, must consider another trafficking offense. In other words, a trafficking offense can not be enhanced to a second or third offense by considering a possession or distribution offense. Because the 2010 omnibus crime bill has been retroacted back to 1995, and my case took place in 2004, then the bill applies to me. and because my case was enhanced to a trafficking third, due to two prior possession offense, my charge should be corrected to reflect a trafficking first. Because trafficking first offense -Ten to 28 grams only carry a maximum term of 10 years, my sentence should be recalculated to show a maximum date of NOV. 2013.

Disposition: Complete

Officer:

Disposition Date: 06/20/16 16:01

Request Responses

Date	Author	Note
06/20/16 16:02	c016464	It does not apply to trafficking offenses

CMT1100D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION
CONVICTION SUMMARY

09/22/16
C056427

SCDC# > 294075
LYLES, CLIFTON D.

CURR. LOC: KERSHAW

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

NUM	CONVICTION OFFENSE	YRS	MO	DYS	DATE	START	PROJ	COMP	STAT	IND	CONV	VIO
* S00003	TRAFFICKING IN CRACK	030	00	000	04/08/04	06/16/03	07/27/2030	ACT	V	V		
S00001	TRAFFICKING IN CRACK	015	00	000	06/16/03	06/16/03	06/16/2003	REM	V	V		

MAKE A SELECTION AND PRESS <ENTER>...

PAGE: 0001

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

ROAI100D
ROAI100M
OMROAUDA

SCDC OFFENDER MANAGEMENT SYSTEM
RECORD AUDIT APPLICATION
SUMMARY OF RECORD AUDITS FOR INMATE

09/22/16
C056427

SCDC#> 294075
NAME.: LYLES, CLIFTON D.

CURR STATUS.: INCARCERATED
CURR LOC....: KERSHAW
CURR CUSTODY: MI2

AUDIT TYPE	AUDIT DATE
RECORDS AUDIT	08/17/05
MAXOUT AUDIT	10/29/03
RECORDS AUDIT	07/02/03

END LIST

PAGE> 0001

AUDIT HISTORY DISPLAYED...

PF3:ADD PF4:MODIFY/DELETE ENTER:DISPLAY

JAIL TIME REPORT FOR SCDC TRANSFER

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE RECORDS OFFICE, PO BOX 21787, COLUMBIA, SC 29221-1787
OFFICE #: (803) 896-8531 FAX #: (803) 896-1217

COUNTY SUBMITTING FORM: York

PURSUANT TO SC STATUTE 24-13-40 ... 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 ...

Name: <u>Jiles, Clifton Donald</u>		Date of Birth:		
Social Security #:		Race/Sex: <u>B/M</u>		
SID #:		FBI #:		
Arrest Date	Charge	Warrant # (or)	Release Date	Reason for Release *
		Indictment #		
<u>-6-05</u>	<u>Trafficking Cocaine 3rd</u>	<u>W # H-061001</u>	<u>7-28-05</u>	<u>R/E</u>
<u>10-29-03</u>	<u>IL</u>	<u>W #</u>	<u>11-18-03</u>	<u>Bond</u>
		<u>I #</u>		
		<u>W #</u>		
		<u>I #</u>		
		<u>W #</u>		
		<u>I #</u>		
		<u>W #</u>		
		<u>I #</u>		
		<u>W #</u>		
		<u>I #</u>		
		<u>W #</u>		
		<u>I #</u>		
Approved By: <u>Capt. [Signature]</u>		Date: <u>7-27-05</u>		

* Reason for Release (i.e., Explain if transferred to another county/city jail, or if inmate bonded). Please submit this form at the time of the inmate's transfer and admission to the SCDC, however, if unable to do so, please mail or fax to the address or number listed above.

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE VS.
CLIFTON DONNEL LYLES

AKA: _____
Race: B Sex: M Age: 34

DOB: _____ # _____
Address: _____

DL#: _____ SID#: SCSC01415880

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#

2002-GS-46-2950

A/W#: H0610011

Date of Offense: 08-21-2002

S.C. Code § : 44-53-375

CDR Code #: 0452

CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: TRAFFICKING CRACK COCAINE 3RD OFFENSE (10 or more, but less than 28 grams) in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0452

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
[Signature]

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 50,000.00 provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

set by SCDPPPS

Recipient: _____

*Fine: \$ 50,000.00

§ 14-1-206 - (Assessments 107.5 %) \$ 53,750.00

§ 14-1-211(A)(1) (Surcharge) \$ 100.00

§ 14-1-211(A)(2) (Surcharge) \$ _____

§ 56-5-2995 (DUI Assessment) \$ _____

3% to Count (if paid in installments) \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$ _____

TOTAL \$ 103,975.00

David Hamilton
Clerk of Court/Deputy Clerk

Court Reporter: _____

PTUP

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, §5.13 TP
Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 01 11315

Sentence Date: 4/8/04

JAIL TIME REPORT FOR SCDC TRANSFER

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE RECORDS OFFICE, PO BOX 21787, COLUMBIA, SC 29221-1787
OFFICE #: (803) 896-8531 FAX #: (803) 896-1217

COUNTY SUBMITTING FORM: York

PURSUANT TO SC STATUTE 24-13-40 ... 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 ...

Name: <u>Lyles, Clifton Donnell</u>		Date of Birth: <u>3</u>		
Social Security #: <u>1127</u>		Race/Sex: <u>B/M</u>		
SID #: <u>1127</u>		FBI #:		
Arrest Date	Charge	Warrant # (or)	Release Date	Reason for Release *
		Indictment #		
<u>16-03</u>	<u>Trafficking Crack Cocaine?</u>	<u>W # H-061001</u>	<u>6-19-03</u>	<u>RLC</u>
	<u>Commitment</u>	<u>W # G-391279</u>		
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
Approved By: <u>Capt. [Signature]</u>		Date: <u>6-17-03</u>		

* Reason for Release (i.e., Explain if transferred to another county/city jail, or if inmate bonded). Please submit this form at the time of the inmate's transfer and admission to the SCDC, however, if unable to do so, please mail or fax to the address or number listed above.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

CLIFTON D. LYLES, 294075.....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

APPELLATE CASE NO. 2017-001994

PROOF OF SERVICE

I, Clifton Lyles (Appellant), do hereby, promise that I did serve the "PETITION FOR WRIT OF CERTIORARI" and the "APPENDIX" on the Respondent, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows:

MELISSA JILL ARNOLD
P.O. BOX 21787/4444 BROADRIVER ROAD
COLUMBIA, S.C. 29221-1787

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, S.C. 29211

This 31 day of October, 2017

BY: Clifton Lyles 294075
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162