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The State of South Carolina
In The Court of Appeals

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JUL 03 2017
SC Court of Appeals

Appeal From Adm. Law Court
Adm. Law Judge: Hon. S. Phillip Lenski
Case#: 2017-001061

Dion Taylor #335089, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Final Brief

Dion Taylor
2208 Easton Street
North Charleston, SC 29405

Statement of Issues on Appeal: Did Adm. LAW Judge commit an error of LAW by seperating two charges from concurrent sentence (expired by his interpretation) & not awarding the 146 days of jail credit of off Aggregate incarcerative sentence of 10 yrs & were his sub. rights prejudiced as a result, being in violation of const. & statutory provisions & clearly erroneous in view of the Reliable, probative & sub. evid. on the whole record?
② Should this Court address the issue of mootness due it being an issue capable of repetition, yet it would usually evade review?

Statement of the Case

This Appeal was initiated by the denial of grievances w/ the S.C. Dept of Corrections, notice of Appeal from these were filed w/ the Adm. LAW Court on 6-27-16, ALJ decision dated 3-24-17, received by Appellant on 3-29-17 & filed on All parties & to this Court on 4-27-17. Appellant was sentenced on 6-3-09 for Armed Robbery, CDV 3rd & probation violation (ie original charge failure to stop for Blue Light) in which All charges were ran concurrently for a total of 10 yrs. The Appellant was awaiting sentencing on All charges he was sentenced for, didn't bond out, was at no time an escapee nor was he serving any sentence or Awaiting sentencing on other charges. On Jan. 31st 2005, Appellant was originally sentenced for Failure to Stop...

& the court disposition was 2yrs sus. to 1yr probation & he was to receive 146 days of jail credit. This jail credit has never actually been applied, Appellant violated this same probation & this same probation extended until his concurrent sentencing in 09.

Argument

Error of law was committed by Adm. Law Judge, in not awarding jail credit (146 days) off of aggregate incarcerative sentence & decision was clearly erroneous & prejudiced Appellant's sub. rights. Appellant has a right to be free from any sentence which exceeds legality. Section 24-13-40 of the S.C. Code mandates that a prisoner receive credit for all time served prior to trial & sentencing unless one of the two exceptions exists: either the prisoner was an escapee or the prisoner was already serving a sentence on one offense, while awaiting ... sentence for a second. Allen v. State, 339 S.C. 393, 395, 529 S.E. 2d 541, 542 (2000); State v. Boggs, 338 S.C. 314, 316, 696 S.E. 2d 597, 598 (Ct. App) (citing State v. McCord, 349 S.C. 477, 487, 562 S.E. 2d 689, 694 (Ct. App. 2002) Section 24-13-40 provides: "in every case... full credit against the sentence must be given for time served prior to ... sentencing..." S.C. Code Ann. § 24 3-40 (Supp. 2016). The denial of credit for time served where no exception exists is an error of law." See Boggs, 388 S.C. at 316, 696 S.E. 2d at 598. No portion of the ALJ' decision (R.p. 2-5) is explicit or infers that any exception afore-described by statute or case law exists, which would preclude granting of Appellant's jail credit time, hence, the

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the error of law is apparent. Section 24-13-40 also elucidates: "...when...(b), the commencement of the service of the sentence follows the revocation of probation... the computation of the time served must be calculated from the commencement of the sentence." See Hayes v. State, 413 S.C. 553, 777 S.E. 2d 6 (2015) The Appellants case is analagous to Hayes in myriad ways. Appellant received split sentence as Hayes, his probation was reinstated, extended until he was awaiting sentencing on all 3 charges incarcerated for & his probation was revoked. Hayes was given a sus. sentence (split sentence), was given jail credit, violated his probation, was reinstated & had it ultimately revoked due to subsequent violation. In Hayes, the Dept of Corrections argued that because Hayes' sentence was modified from the original 5 yrs to 3 yr sentence, that his jail credit time couldn't be deducted from the modified sentence. Appellants sentence was modified to a concurrent 10 yr sentence from the original 2 yr sus. sentence. This Court found that to not deduct jail credit time from a modified sentence would have the def. doing more time than allowed by law & that the statute was being misapplied by the PCR Court & Dept of Corrections in the Hayes case as it is being misapplied by the judgment of the ALJ in this instance. Allen states: The words of the statute must be given their plain & ordinary meaning w/out resorting to subtle or forced construction to limit or expand its scope." when the ALJ in its order/decision (R.p. 2-5) takes 2 out of 3 charges Appellant was concurrently sentenced to & in said order says the 2 sentences have expired, so the issue

According to "ALJ" is moot, the "ALJ" has limited the scope of the statute (re S.C. Code 24-13-40), misapplied it by its interpretation & made an error of law & is clearly erroneous decision. In Blakeney v. State, 529 S.E. 2d (2000): "... County's decision not to execute the arrest warrant until ... months later ... should not preclude Respondent from receiving credit ..." See Travis v. State, 724 So. 2d 119 (Fla. App. Dist. 1998) (At the time arrest warrant is transmitted ... def. is deemed to be in custody on the warrants ... therefore entitled to jail credit on concurrent sentencing) Blakeney is clear in that, no matter when warrants were served & if a person is awaiting sentencing on all charges & receives concurrent sentence he must receive the jail credit not just on particular charges but rather a reduction from the concurrent sentence & S.C. Code Ann. 24-13-40 espouses this.

Separate Statement of Facts:

Appellant directs the Courts attention to Record on Appeal trans. of guilty plea (R. p. 15 Lines 24-25), wherein pub. def. mentions the 146 days of jail credit the Appellant seeks (R. p. 18 Lines 2-3) he states he's bringing this to the Courts attention & mentions contemporaneously w/ the 252 days jail credit that Respondent & "ALJ" say, the latter is only due to Appellant. The Appellant directs the Court attention to sentencing sheets (R. p. 10) (R. p. 11, p. 12) which clearly show concurrent sentencing & the dates of arrest, all being prior to Sept. 24th 2008, the date "ALJ" & Respondent agree as date they begin counting jail time from. Appellant has provided the Court w/ a declaration lending veracity to facts of awaiting sentencing on all 3 charges he's incarcerated for c.f.

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Plea hearing trans. portion of Record on Appeal (R.p. 8 Line 1) pub. def. states Appellant was served w/ warrants on Oct. 1st for prob. violation, there is no mention Appellant was out on bond when served w/ warrants & he was indeed incarcerated when he received warrants for prob. violation.

Argument

(2) Should this Court address the issue of mootness because it is one capable of repetition, yet evading review, & is this issue moot? Even if this issue is considered moot by this Court, this Court has ruled that it will address such an issue due to repetitiousness capability yet it would usually evade review. Appellants case is analogous in circumstance & to the law precepts warranting a review by this Court. This case is one addressing the calculation of Appellants sentence & the requirement that a prisoner receive credit for time he has served pre-trial before sentencing. Nelson v. Ozmint, 390 S.C. 432, 433-34, 702 S.E. 2d 369, 370 (2010) (addressing moot issue of the Depts calculation of the prisoners sentence as not including good time credits... because it was an issue that was capable of repetition yet it would usually evade review). Hayes court held: "issue on appeal was moot upon def. completion of sentence but was nevertheless reviewable as an issue that was capable of repetition but evading review." Appellant is still incarcerated & serving concurrent sentence, but even so, this Court reviewed the Hayes case premised upon the said governing rule, even though Hayes was no longer incarcerated. Appellant trusts the Courts judiciary acumen in deciding if this is indeed a moot issue, either way, case law precedent compels this Court to address the issue of mootness. The Courts have construed

issues of mootness as one of declaratory judgment. Nelson court held: "We ... construe this as a motion for a declaratory judgment. See S.C. Code Ann. §15-53-130 (2005)(purpose of the Declaratory Judgment Act is to settle & to afford relief from the uncertainty & insecurity w/respect to rights ... & other legal relations & it is to be liberally construed & administered) Town of Hilton Head v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E. 2d 801 (1992) (the S. Ct can render a declaratory judgment when a justiciable controversy settling legal rights of parties exist. When a statute is penal in nature it must be strictly construed against the State in favor of the def." State v. Blackmon, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991). Appellant's case is one dealing w/his punishment insofar as it is one about the length of sentence, the legality of it, & if it has exceeded the legal limits. On 3-22-17, prior to ALJ order, Respondent served the Appellant through inst. caseworker, Due Process Notice Document, "Hayes v. State probation revocation stating in part: "We (SCDC) have determined this case applies to your probation revocation sentence & you are entitled to an additional 140 days." The controversy is that these days didn't reduce Appellant's incarcerative sentence the statute was misapplied by ALJ & Respondent, germane to the plain language of said statute mandating awarding of pre-trial detention time & the manner in which it should be done (i.e. Section 24-13-40 of S.C. Code) the Courts interposing is needed so that the 140 days of jail credit is awarded & taken from the incarcerative & concurrent sentence.

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Conclusion

The issue of mootness due to the penal nature of this case & the calculation of jail credits should be addressed by this Court & sub. rights of the Appellant to not serve a prison term exceeding its legal limits are violated when statute & governing case law aren't adhered to & jail credits of Appellant aren't taken from the 10yr concurrent sentence as they should be by S.C. law. Appellant seeks adjudication by this Court granting the 146 days jail credit to directly be deducted from the 10yr concurrent sentence, not the lesser encompassed sentences.

Dated: 6-~~28~~ 29 -17

S/ Dion D. Taylor

CC:

Christina Catoe Bigelow
S.C. Dept of Corrections
Office of Gen. Counsel
P.O. Box 21787/4444 Broad River Rd
Columbia SC 29221-1787

Certificate of Compliance

I, undersigned, certify that final brief is in compliance w/ Rule 21(b), in that revisions & refs to the Record reflect where they can be found in the Record on Appeal & is identical to initial brief.

Dated: 6-~~28~~ 29-17

S/ Dion O. Taylor

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Respondent

Proof of Service

I, undersigned, certify that I served Final Briefs on Respondent, Adm. LAW Court & S.C. Court of Appeals by depositing a copy of it in the U.S. Mail, postage pre-paid, on 6-29-17 & Addressed to: Clerks Office, S.C. Adm. LAW Court, 1205 Pendleton St., Suite 224, Columbia S.C. 29201, Christina Catoe Bigelow, Esquire, Office of Gen. Counsel, S.C. Dep't of Corrections, P.O. Box 21787/4444 Broad River Rd, Columbia SC 29221-1787; S.C. Court of Appeals, Jenny Abbott Kitchings, Clerk, P.O. Box 11629, Columbia S.C. 29211.

s/Dion O. Taylor

Dated:
6-29-17