STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP

Appellant Case No. 2017-000232

JIMMY D. MEGGS JR., # 277400,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RECEIVED
NOV 02 2017
SC Court of Appeals

FINAL [redacted] BRIEF
OF APPELLANT

Jimmy D. Meggs Jr., 277400
TCI SA-227
1573 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

TABLE OF CONTENTS AND CASES

(Refer to Initial Brief)

STATEMENT OF ISSUES ON APPEAL

(Refer to Inital Brief)

STATEMENT OF THE CASE

(Refer to Initial Brief)

The Department's sole argument is that the Power to grant or deny award House Arrest credit is vested **Solely** in the **Sentencing** Judge) is error, Any Judge can award credits and/or The Appellant contends that Title 24 Chapter 13 speaks specifically to "Corrections" as it is outlined in the South Carolina Code Ann. The Appellant would futher set out that § 24-13-40 says the "Computation" of Time Served. Who else but SCDC does this function. When a criminal Defendant is convicted before the Court, and that "Court" Imposes sentence, The Court Remands that Criminal Defendant to South Carolina Department of Corrections (Hereafter referred as "SCDC"), who calculates and computes their sentence. As you look futher in § 24-13-(100-230) which deals with Goodtime, Work, Educational Credits This Calcuation is not conducted by the Courts but by "SCDC".

As it relates to the "SCDC" **May** Argument to essentially say that the Granting of this time is discretionary is not compelling because the Appelant would point to the similiar language argued in both Fowler and Bolin where is says (**May** have the sentence suspended and probation granted and is eligible for parole, supervised Furlough, Community Supervision, Work Release, Work Credits, Eduational credits, Good time credits, In all both Fowler and Bolin hingedon the word **May**. However There, These Offenders did not have to go back and obtain a Court Order, They were awarded their credits by the South Carolina Department of Corrections.

Where "SCDC" already knows that Appellant here was on Monitored House Arrest from April 3 2000 until August 9 2001 (See R.O.A. pg. 2,3,22) and because as § 24-13-100-230) sets out a Month -by-Month award of both Goodtime, Work, and Educational Credits Finality has not attached. Finally, The "SCDC assertion that the only one Authorized to award this Monitored House Arrest credit is the "Sentencing Judge" is not

compelling, as **Any** judge can grant this credit as it the situation in Shannon Bogan or "Bogan" (See R.O.A. pg. 60-61) "Bogan" was charged/ Arrested on June 27 2011. On August 3 2011 "Bogan" was placed on GPS Monitored House Arrest until trial and released on a $55,000 surity bond. During this time he served Approx. 483 days in home detention through GPS Monitoring. On February 3 2012 "Bogan" was indicted for this incident. On November 28 2012 "Bogan" entered a guilty plea to (Indictment 2012-GS-42-784) on June 7 2013, **some 7 months after Bogan plead and was sentenced.** S.C. Legislature amended S.C. Code Ann. § 24-13-40 to reflect (And May be given for any time spent under Monitored House Arrest.)

In 2016, While "Bogan" was on PCR, His Counsel (Leah Moody) obtained an Order granting him (Bogan) credit for this House Arrest he spent in 2011/2012, In all the Department Retroactive argument is Manifestly without merit and would be clearly fraud. It would futher create a Equal Protection, Ex-Post-Facto and Due process violation, Also, because the Court will not at a minimum appoint Counsel ald allow Appellant to be heard in Open Court on this issue it would create a Due Process Violation under the Law.

EQUAL PROTECTION VIOLATION

Appellant here should be treated the same as others for time he spent in a similiarly situated situation. To grant some this credit where § 24-13-40 as a whole reads "Mandatory language" even Interpreted by judges, Attorney General's that "Time served is Mandatory. However, the Appellant here would contend that Title 24 Chapter 13 in it's heading says "Corrections" and this Statute speaks directly to "Corrections" and not the Courts. Under this Argument the Appellant would contend:

1. That Time Served is Mandatory; and
2. Title 24 Chapter 13 is entitled "Corrections" and it would be encumbent upon the entity who "Computes" and "Calculates" an Offenders sentence as relayed in § 24-13-40.

EX-POST-FACTO VIOLATION

In This Argument the Appellant would contend that "SCDC" has essentially misconscrued the "retroactive argument and the Appellant would show case and point of how this argument is not compelling , One an Offenders Calculation/ Computation is not final as defined by South Carolina Code Ann. § 24-13-100-230), The Statute is crystal clear that the application of credit (i.e. Goodtime, Work, Educational Credits) is applied on a **Month-by-Month** basic.

Remembering that our Founders established "Ex-Post-Facto" to prevent the Government from applying an increased penalty or new penalty to something in the past, i.e. applying a rule/law retroactively to harm a citizen.
In essence the "State" is trying to use this "Ex-Post-Facto" sword by claiming that this Appellant would not be entitled to this new benefit.

Futher, Our Courts, Like in the Varner situation Illustrated by SCDC here, Varner by contrast was a criminal conviction from a Criminal Statute with a Criminal Sentence. The case here is totally dissimiliar, § 24-13-40 is procedural/ Remedial in Nature as it does not set out a Crime and Punishment.

DUE PROCESS VIOLATION

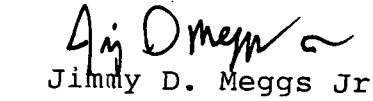
Where there is a procedure/ process by which other Offenders have went back to Court and essentially received Retroactive credit and the State to not appoint counsel and allow a hearing before the Court on this matter it would result in a Due Process Violation under the Law, Where essentially, the Appellant here is not receiving a hearing due to his inability to retain counsel and have a hearing on this issue.
Futher, The State here has tried to put up a road Block and even argued after they knew or reasonable should have known other Offenders who could afford Counsel have went back and

received Retroactive Application by judges other than their sentencing judges. Then commit fraud by arguing both that I could not receive this credit because of essentially the same two reasons that those other Offenders overcame to receive their credit, where they (SCDC) was the Respondent in the Matter and should know. Where those others received their Monitored House Arrest for time spent before the enactment of that June 7 2013 Bill, And claiming that only the sentencing judge can award this credit (See. R.O.A. pg. 44 Statement of Issues on Appeal by Respondent) and then know or Reasonable should know that other Offenders have received their credit both Retroactively and by a Judge that was not thier Sentencing Judge like in the "Bogan" cae (R.O.A. pg. 60-61)

CONCLUSION

The Appellant **Prays** That this Court **Reverse** the Administative Law Courts Decision that The Appellant is entitled to credit for his Monitored House Arrest. **Order** SCDC to award Appellant credit for the time spent under Monitored House Arrest from April 3 2000 to August 9 2001 or 17 Months towards Appellant's Sentence, Or any other remedy that this Court deems just and Proper.

RESPECTFULLY, SUBMITTING,



Jimmy D. Meggs Jr.

This 18th Day of October 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-ALC-04-0550-AP

Appellant Case No. 2017-000232

JIMMY D. MEGGS JR., 277400,

APPELLANT,

vs.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served my [Final Brief of Appellant & Motion to serve and file out of time] on Respondent's Counsel of Record: South Carolina Department of Corrections, Christina Catoe Bigelow, Esq, General Counsel's Office, Post Office Box 21787, Columbia, SC 29221-1787 by depositing the same in the United States Mail, Postage Prepaid on this:

This 18th Day of October 2017.

Jimmy D. Meggs Jr., 277400
TCI SA-227
1578 Clarence Coker Hwy.
Turbeville, SC 29162

SERVED ON:
S.C. Dept. of Corrections
Office of General Counsel
Christina C. Bigelow, Esq.
P.O. Box 21787
Columbia, SC 29221-1787
(COUNSEL FOR RESPONDENT)