

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

THE HONORABLE H.W. FUNDERBURK, JR., ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001964

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SC Court of Appeals

MICHAEL BRAXTON⁴ 119081 ***** APPELLANT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ***** RESPONDENT

FINAL BRIEF OF APPELLANT

MICHAEL BRAXTON⁴ 119081
PRO SE
KERSHAW CORRECTIONAL INST
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KERSHAW, SC 29067

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STATEMENT OF ISSUE ON APPEAL

1. DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE DECISION THAT THE DEPARTMENT OF CORRECTIONS HAS CALCULATED THE APPELLANT'S SENTENCE CORRECTLY.

STATEMENT OF THE CASE

This matter is before the Honorable Court of Appeals of the State of South Carolina. The Appellant, Michael Braxton submits his appeal of the final decision of the Administrative law Court ("ALC", dated August 24, 2017. The ALC affirmed the South Carolina Department of Corrections ("S.C.D.C.") claim that the Appellant who is incarcerated within the S.C.D.C., that his imposed sentence "has been calculated correctly."

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Al-Shabazz decision explained that procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. Such as a liberty interest is at stake in the calculation of inmates sentence. Tant v. S.C. Dep't of Corrs., 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014)(citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a Constitutional liberty interest"). Also see Sullivan v. S.C. Dep't of Corrs., 355 S.C. 437, 441-42, 586 S.E.2d 124,126 (2003). The Court may not substitute its judgment for the judgment of the agency as to the weight the evidence or questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. §1-23-380(5)(Supp.2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions are in violation of constitutional or statutory provision; in excess of statutory authority of the agency, and made upon unlawful procedure, affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion Id.

ARGUMENT

DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE DECISION THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS CALCULATED THE APPELLANT'S SENTENCE CORRECTLY.

THE APPELLANT'S SENTENCE HAS NOT BEEN CALCULATED CORRECTLY DUE TO HIM NOT BEING CREDITED ON HIS ORIGINAL SOUTH CAROLINA SENTENCE FROM MARCH 31, 1994-NOVEMBER 2, 2015. THIS WAS THE TIME THE APPELLANT WAS ON PAROLE SUPERVISION, INCARCERATED PRE TRIAL ON AN UNRELATED OFFENSE, AND INCARCERATED POST TRIAL IN THE STATE OF TENNESSEE ON THE UNRELATED OFFENSE.

THE RESPONDENT ACKNOWLEDGES THAT THE APPELLANT WAS ON PAROLE SUPERVISION FROM MARCH 31, 1994-MAY 28, 1996. (R. INITIAL BRIEF OF THE RESPONDENT, pg. 4 L 6-8) HOWEVER, THE RESPONDENT OFFERS NO JUSTIFICATION OF IT'S DECISION NOT TO APPLY THIS TIME TO THE APPELLANT'S ORIGINAL SOUTH CAROLINA SENTENCE. THE APPLICATION OF THIS TIME IS MANDATED BY SANDERS V. McDOUGAL (S.C. 1964) 299 S.C. 160, 134 S.E.2d 836, INMATE RECORD PLAN SCDC POLICY OP-21.09, RELEASE CALCULATION 14.9.3 ACTIVE PAROLE, AND THE SOUTH CAROLINA BOARD OF PARDONS AND PAROLE POLICY LISTED AS "THE EFFECT OF REVOCATION" (R. APPELLANT INITIAL BRIEF, pg. 4 L 1-23) (R. APPELLANT REPLY BRIEF TO ALC, pg. 2 L 5-24).

THE APPELLANT'S SENTENCE HAS NOT BEEN CALCULATED CORRECTLY DUE TO SCDC FAILURE TO APPLY FROM MAY 28, 1996-MAY 1, 1998 TOWARDS THE REMAINDER OF HIS ORIGINAL SOUTH CAROLINA SENTENCE. THIS TIME IS AT ISSUE SINCE THIS WAS THE PERIOD IN WHICH THE APPELLANT WAS INCARCERATED PRE TRIAL IN TENNESSEE BEFORE BEING SENTENCED ON AN UNRELATED OFFENSE.

THE ADDITION OF THIS TIME TO THE APPELLANT'S ORIGINAL SOUTH CAROLINA SENTENCE IS MANDATED BY S.C. CODE ANN § 24-13-40, STATE V. SANDERS, 251 S.C. 431, 163 S.E. 2d 220 WHICH STATES IN PARAPHRASE; IF A PRISONER WAS NOT AN ESCAPEE, OR IS SERVING A SENTENCE FOR ONE OFFENSE AND IS AWAITING TRIAL AND SENTENCING FOR A SECOND OFFENSE HE SHALL RECEIVE CREDIT FOR TIME SERVED PRIOR TO TRIAL FOR THE FIRST OFFENSE NOT THE SECOND. (R. APPELLANT INITIAL BRIEF, pg. 5 L 15 OF pg. 7).

A PAROLE VIOLATION HOLD WAS LODGED AGAINST THE APPELLANT BY THE STATE OF SOUTH CAROLINA ON MAY 28, 1996, THIS HOLD IS CONCLUSIVE EVIDENCE THAT THIS WAS THE APPELLANT'S FIRST OFFENSE (R. pg. 5 PAROLE VIOLATION WARRANT) THE APPELLANT ^{was} ~~was~~ ^{sentenced} SUBSEQUENTLY ON A SECOND UNRELATED OFFENSE ON MAY 1, 1998. THE APPELLANT HAS ALSO PRESENTED SUSTANTIAL CASE LAW IN AMPLIFICATION OF S.C. CODE ANN, § 24-13-40 THAT ESTABLISHES PRECEDENT IN REGARD TO THIS ISSUE.

STATE V. DOZIER, 263 S.C. 267, 210 S.E.2d 225 (1974) PEOPLE V. STATE, 141 Mich.App. 610, 367 N.W. 2nd 430 (1985) GOINGS V. MISSOURI DEPT OF CORR; 6 S.W. 3d 906 (Mo 1999), TRAVIS V. STATE, 724 So.2d 119 (Fla App.1 Dist 1998), ALLEN V. STATE, 529 S.E.2d 541 (S C 2000) (R, pg.6 APPELLANT INTIAL BRIEF, L 9-33),

FROM MARCH 31, 1994-MAY 1, 1998 THE APPELLANT WAS SERVING TIME EXCLUSIVELY ON HIS SOUTH CAROLINA SENTENCE .

ON JUNE 1, 1998 THE APPELLANT WAS TRANSFERRED TO THE TENNESSEE DEPARTMENT OF CORRECTIONS. HE REMAINED IN THE CUSTODY OF THE DEPARTMENT UNTIL THE EXPIRATION OF HIS SENTENCE ON NOVEMBER 2, 2015. THIS PERIOD SHOULD BE CREDITED TOWARDS THE REMAINDER OF THE APPELLANT'S ORIGINAL SOUTH CAROLINA SENTENCE, SINCE IT WAS SERVED UNDER THE CONSTRAINT OF THE PAROLE VIOLATION HOLD, WHILE NEVER BEING AFFORDED A PROBABLE CAUSE OR A REVOCAION HEARING TO ADDRESS THE ISSUES OF THE VIOLATION, THIS DEPRIVED THE APPELLANT THE RIGHT TO DUE PROCESS UNDER U.S.C.A. Amend XIV §1-Due Proc *** JONES V. U S PAROLE COMMISSION, 20 F.Supp 3d 1 (R. INTIAL APPELLANT BRIEF, pg.12 and 13 ARGUMENT III).

FROM MAY 28, 1996-NOVEMBER 2, 2015 THE APPELLANT WAS DENIED THE OPPORTUNITY TO EXERCISE HIS PROTECTED CONSTITUTIONAL RIGHT TO DUE PROCESS. SCDC MAINTAINS THAT A PAROLE VIOLATION HOLD IS MERELY A DETAINER THAT MAY BE DELAYED UNTIL THE TERMINATION OF THE IMPRISONMENT OF THE PAROLEE UNDER ANOTHER SENTENCE (R. RESPONDENT'S INTIAL BRIEF, pg.5 L 5-15).

THIS CITATION IS CONFIRMATION THAT THE RESPONDENT IS WELL AWARE THAT THE APPELLANT'S SOUTH CAROLINA OFFENSE OF THE PAROLE VIOLATION IS HIS FIRST OFFENSE. HOWEVER, THE RESPONDENT IS SEEMINGLY UNAWARE THAT A HOLD IS NOT A VEHICLE THAT GRANTS AUTHORIZATION TO SUSPEND, FRUSTRATE OR ULTIMATELY EXTINGUISH ONE'S CONSTITUTIONAL DUE PROCESS RIGHTS. GADDY V. MICHAEL U.S. COURT OF APPEALS FOURTH CIRCUIT 519 F.2d 669, 18 U.S. C.A. 4205-4207 CONSTITUTIONAL LAW (K) PAROLE. (R. APPELLANT INTIAL BRIEF, pg.12 L 1-12)

FINALLY, THE MANUFACTURED EXPIRATION DATE OF 6-28-22 ISSUED TO THE APPELLANT IS ADDITIONAL EVIDENCE THAT HIS SENTENCE HAS NOT BEEN CALCULATED CORRECTLY.

THE APPELLANT HAVING SERVED (10) TEN YEARS (4) FOUR MONTHS ON A (30) THIRTY YEAR SENTENCE, BEGINNING ON OCTOBER 24, 1983 UNDER S.C.CODE ANN 16-3-652, WOULD NOT REQUIRE THE ADDITIONAL SERVICE OF (6) SIX YEARS (7) SEVEN MONTHS IF CALCULATED CORRECTLY UNDER THE SENTENCING STATUTE REQUIREMENT OF THAT ERA. (R. APPELLANT REPLY BRIEF, TO THE ALC, pg.3 L 26-32, pg.4)

THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS NOT ONLY RELIEVED ITSELF FROM THE OBLIGATION OF ABIDING BY ESTABLISHED MANDATED STATUTE(S), CASE LAW(S), POLICIES, PRECEDENT AND PROCEDURES, IT HAS ON ITS OWN ACCORD IN ESSENCE, ASSIGNED THE APPELLANT TO A NEW SENTENCE ABSENT THE CUMBERSOME, BUT ESSENTIAL REQUIREMENT OF DUE PROCESS.

CONCLUSION

THE RESPONDENT REMAINS UNMOVED IN ITS CONCLUSION THAT THE APPELLANT'S SENTENCE HAS BEEN CALCULATED CORRECTLY, HOWEVER, IT IS CLEAR UPON ANY REVIEW OF THE RECORD, OR THE OVERALL STATUS OF THE APPELLANT WITHIN THE DEPARTMENT, THAT NOTHING IS CORRECT CONCERNING HIS CLASSIFICATION WITHIN SCDC.

DURING THE APPELLANT'S INITIAL CLASSIFICATION AFTER BEING REMANDED BACK INTO SCDC, HE WAS RENDERED THE ERRONEOUS EXPIRATION DATE OF ~~JUNE 28~~, 2022, AFTER BEING ASSIGNED TO HIS PERMANENT INSTITUTION (KERSHAW CORRECTIONAL), IT WAS CONVEYED TO HIM WHILE BEING ASSIGNED A JOB, THAT HIS GOOD TIME AND WORK CREDITS HAD BEEN PRE-CALCULATED INTO HIS SENTENCE AT (6) SIX DAYS PER MONTH INSTEAD OF (32) THIRTY TWO DAYS PER MONTH. THE APPELLANT'S GOOD TIME AND WORK CREDITS ARE BEING APPLIED IN ACCORDANCE TO SCDC POLICY OP-21.07 (EARNED WORK CREDITS) AND OP-21.11 (LOSS OF STATUTORY GOOD TIME), INSTEAD OF BY S.C. CODE ANN. § 24-13-210 (CREDIT GIVEN TO CONVICTS FOR GOOD BEHAVIOR), INSPITE OF THE FACT THAT THE APPELLANT WAS SENTENCED PRIOR TO ~~JANUARY 1~~, 1996.

ALSO, DURING THIS INTERACTION THE APPELLANT WAS INFORMED THAT HE HAD NOT BEEN CREDITED WITH HIS TIME ON SUCCESSFUL PAROLE SUPERVISION, NOR HIS PRE OR POST TRIAL INCARCERATION TIME SERVED IN TENNESSEE.

SCDC HAS FAILED TO ACKNOWLEDGE THIS STATUE ON THE APPELLNT'S BEHALF, AS IT MALICIOUSLY CONTINUES IT'S REFUSAL TO OBSERVE THE MANDATED STATUES, CASE LAW AND POLICIES PERTAINING TO THE APPLICATION OF THE APPELLANT'S PAROLE TIME AS WELL AS HIS PRE AND POST TRIAL ~~FAIL~~ CREDITS.

"THE CALCULATION AND APPLICATION OF MANDATORY CREDIT FOR TIME SERVED IS THE ADMINISTRATIVE DUTY OF THE DEPARTMENT" S.C. CODE ANN. § 24-13-40. THE RESPONDENT'S MALICE HAS BEEN OVERTLY PRESISTENT ~~FROM THE ONSET~~, AS IT VIOLATED ~~THE~~ APPELLANT'S PROTECTED LIBERTY INTREST UNDER THE 14TH AMENDMENT ENTITLING HIM TO MINIMAL DUE PROCESS.

BY NOT AFFORDING THE APPELLANT A PROBABLE CAUSE OR A REVOCATION HEARING FROM MAY 28, 1996 THROUGH NOVEMBER 2, 2015 (WHICH WAS BEFORE AND AFTER TRIAL), ABROGATED THE APPELLANT'S DUE PROCESS RIGHTS. THIS HINDERANCE UNDERMINED HIS ABILITY TO FORMULATE AN EFFECTIVE DEFENSE TO CONTEST THE ISSUE OF THE VIOLATION, OR TO PROFFER MITIGATION EVIDENCE ON HIS BEHALF. THE RESULT OF THIS ACTION CAUSED A GRIEVIUS LOSS TO THE APPELLANT DUE TO THE DIADVANTAGE IMPOSED UPON HIM.

THE QUANTUM OF EVIDENCE AS PRESCRIBED BY THE STATUTE(S) OR LAW(S) UNDER WHICH JUDICIAL REVIEW IS PERMITTED ARE CLEARLY IN SUPPORT OF THE APPELLANT'S POSITION THAT HIS SENTENCE HAS NOT BEEN CALCULATED CORRECTLY, AND THE APPELLANT HUMBLY PETITIONS THIS HONORABLE COURT TO BE RELEASED FROM AN EXPIRED SENTENCE.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Michael Braxton", written over a horizontal line.

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MA-41

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JANUARY 30, 2018