

STATE OF SOUTH CAROLINA, IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT THE HONORABLE
H. W. FUNDERBURK JR., ADMINISTRATIVE LAW JUDGE

APPELLANT CASE NO. 2017-001964

MICHAEL BRAXTON² 119081

APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

RECEIVED
FEB 02 2018
SC Court of Appeals

REPLY BRIEF OF APPELLANT

MICHAEL BRAXTON² 119081
KERSHAW CORRECTIONAL INST
4848 GOLDMINE HWY
KERSHAW, SC 29067

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STATEMENT OF ISSUES ON APPEAL

1. Is the Administrative Law Court and (S.C.D.C.) in error by not instating from March 31,1994 - May 28,1996 (26 months) which was the time the [Appellant] was on Parole (Not House Arrest), towards the remainder of original sentence.

2. Is the Administrative Law Court and (S.C.D.C.) in error for not instating from May 28,1996 - May 1,1998 (24 months, which is the time the [Appellant] was incarcerated prior to trial and sentencing with an active "Parole Violation" warrant in effect, thereby prejudicing him by not conducting a "Probable Cause" or Revocation" hearing.

3. Is the Administrative Law Court and (S.C.D.C.) in error by not implementing from June 1,1998 through November 2,2015 (17 years 5 months), towards the [Appellant's] original sentence. This time was served within the Tennessee Department of Corrections with a "Parole Violation" warrant pending while NEVER being afforded a "Probable Cause" or a "Revocation" hearing.

4. Should the issue of the time it took to extradite the [Appellant] from Tennessee back to South Carolina, which was from November 2,2015 through January 20,2016, be available for Appellate review.

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 I

IS THE ADMINISTRATIVE LAW COURT AND S.C.D.C. IN ERROR BY NOT INSTATING FROM MARCH 31, 1994 - MAY 28, 1996, WHICH WAS THE TIME THE APPELLANT WAS ON PAROLE NOT (HOUSE ARREST) TOWARDS THE REMAINDER OF HIS ORIGINAL SENTENCE.

THE APPELLANT SENTENCE START DATE WAS OCTOBER 24, 1963 HE WAS SENTENCED UNDER 16-3-652 TO (30) THIRTY YEARS IN SCDC. THE SENTENCING STRUCTURE AT THAT TIME WAS 51/2 DURING THIS ERA, AS THE APPELLANT WAS PAROLED AFTER SERVING (10) YEARS (5) MONTHS, THE RESPONDENT CONTINUES TO ASSERT THAT SCDC AND THE ADMINISTRATIVE LAW COURT ARE CORRECT IN THEIR ASSESSMENT THAT THE APPELLANT SENTENCE "HAS BEEN CALCULATED CORRECTLY" see (pg. 4 OF RESPONDENT'S INITIAL BRIEF) ALSO ON PG. 4 THE RESPONDENT ACKNOWLEDGES THAT THE APPELLANT WAS ON PAROLE SUPERVISION NOT (HOUSE ARREST) FROM MARCH 31, 1994 - MAY 28, 1996, (26 MONTHS). ~~HOWEVER~~, HOWEVER, THEY FAIL TO PROVIDE AN EXPLANATION WHY THIS TIME HAS NOT BEEN APPLIED TO THE REMAINDER OF HIS ORIGINAL SENTENCE, MOREOVER, THEY OFFER NO EXPLANATION IN SUPPORT OF THE DECISION IN SUPPORT OF THE ABORTION OF MANDATED SCDC POLICY OP-21, 09, THE SOUTH CAROLINA BOARD OF PARDONS AND PAROLE POLICY TITLED "THE EFFECT OF REVOCATION", AS WELL AS ESTABLISHED CASE LAW SANDERS V. McDOUGAL, S.C. (1964) 299, S.C. 160, 134 S.E. 2d 836, STATE V. ELLIS, 397 S.C. 576 SUPREME COURT OF SOUTH CAROLINA, AS WELL AS CROOKS V. SANDERS 123 S.C. 28, 115 S.E. 760, 28 ALR 940 IN THE CAUSE OF THE APPELLANT. (see pg. 4 OF THE APPELLANT'S INITIAL BRIEF) in this court; INSTEAD THE RESPONDENT AS WELL AS THE ALC HAVE ~~CHOOSE~~ ^{ELECTED} TO NOT ONLY IGNORE, BUT TO ULTIMATELY VIOLATE PRECEDENT AND PROTOCOL TO ESTABLISHED PROCEDURE.

ARGUMENT II

IS THE ADMINISTRATIVE LAW COURT AND S.C.D.C. IN ERROR FOR NOT IMPLEMENTING FROM MAY 28, 1996 - MAY 1, 1998 (24 MONTHS) WHICH WAS THE TIME THE APPELLANT WAS INCARCERATED PRIOR TO TRIAL AND SENTENCING WITH A PAROLE VIOLATION WARRANT IN ~~HOUSE ARREST~~ ^{EFFECT}, THEREBY PREJUDICING HIM BY NOT CONDUCTING A PROBABLE CAUSE OR REVOCATION HEARING.

THE ADMINISTRATIVE LAW COURT AFFIRMED SCDC'S DECISION NOT TO CREDIT THE APPELLANT FROM MAY 28, 1996 - MAY 1, 1998 WHICH WAS THE PERIOD INWHICH THE APPELLANT WAS INCARCERATED IN THE DAVIDSON COUNTY TENNESSEE JUSTICE CENTER PRIOR TO TRIAL AND SENTENCING ON A SUBSEQUENT OFFENSE. AFTER SERVING FROM MARCH 31, 1994 - APRIL 16, 1996 ON SUGCESSFUL PAROLE SUPERVISION, THE APPELLANT WAS INCARCERATED IN DAVIDSON COUNTY (TENN) ON AN UNRELATED OFFENSE TO HIS SOUTH CAROLINA CONVICTION. ON MAY 28, 1996 A PAROLE VIOLATION "HOLD" WAS PLACED ON THE APPELLANT AND HE REMAINED UNDER THE CONFINEMENT

CONSTRAINT ^{of} THIS HOLD UNTIL HIS DISCHARGE TO THE TENNESSEE DEPARTMENT OF CORRECTIONS ON JUNE 1, 1998.

FROM MARCH 31, 1994-MAY 1, 1998 THE APPELLANT WAS SERVING TIME EXCLUSIVELY ON HIS SOUTH CAROLINA CONVICTION WHILE ON PAROLE THEN, AFTER THE HOLD WAS APPELLED ON MAY 28, 1996, UNTIL HIS SENTENCING ON MAY 1, 1998 ON THE TENNESSEE CONVICTION, THIS FACT ESTABLISHES HIS SOUTH CAROLINA CONVICTION AS HIS FIRST OFFENSE! AFTER BEING CONVICTED IN NASHVILLE TENNESSEE OF (1) COUNT OF ORALLY SEXUALLY ASSAULTING A 20 YEAR OLD WOMAN IN A HOTEL ROOM WHICH STATED TWICE UNDER OATH THAT "SHE COULD HAVE LEFT ANYTIME SHE GOT READY," THE APPELLANT WAS SENTENCED TO (23) YEARS WITHIN TDOC. (case no. 97-B-1350)

THIS OCCURANCE CAN ONLY BE CATAGORIZED AS THE APPELLANT'S SECOND OFFENSE! S.C. CODE ANN. §24-13-40 SPECIFICALLY ~~STATES~~ ^{STATES} IN RELEVANT PORTION: "IN EVERY CASE IN COMPUTING THE TIME SERVED BY A PRISONER FULL CREDIT AGAINST SENTENCE SHALL BE GIVEN FOR TIME SERVED *273 PRIOR TO TRIAL AND SENTENCING, PROVIDE, HOWEVER, THAT CREDIT FOR TIME SERVED PRIOR TO TRIAL AND SENTENCING SHALL NOT BE GIVEN:

1). WHEN A PRISONER AT THE TIME IMPRISONED WAS AN ESCAPEE FROM ANOTHER PENAL INSTITUTION; OR

2). WHEN A PRISONER IS SERVING A SENTENCE FOR ONE OFFENSE AND IS AWAITING TRIAL AND SENTENCE FOR A SECOND OFFENSE ...

" IN WHICH CASE HE SHALL NOT RECEIVE CREDIT FOR TIME SERVED PRIOR TO TRIAL IN REDUCTION OF HIS SENTENCE FOR THE SECOND OFFENSE "

THE RESPONDENT IN IT'S ARGUMENT TO THE ALC AS WELL AS BEFORE THIS HONORABLE COURT HAS ELECTED TO OMIT THE FINAL PARAGRAPH OF THIS STATUE, AS THEY CONTINUE TO PRACTICE SELECTIVE INTERPETATION AND APPLICATION OF THE LAW. (see pg 4,5 OF THE RESPONDENT'S INITIAL BRIEF) THE APPELLANT HAS CITED PEOPLE V. STATE, 141 MICH. App, 610, 367 N.W. 2d 430 (1985), STATE V. DOZIER 263 S.C. 267, 210 S.E. 2d 225 (1974), 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 (SC 2000) and CLARK, 321 S.C. at 380 n 3, 468 S.E. 2d at 655 n. (SOUTH CAROLINA DETAINEE- CONSTRUCTIVELY IN SOUTH CAROLINA CUSTODY). IN SUPPORT OF THIS POSTION ON THIS ISSUE (see pg. 6 OF HIS INITIAL BRIEF TO THIS COURT)

ADDITIONALLY SCDC'S FAILURE TO CONDUCT A REVOCATION OR AT THE VERY LEAST A PROBABLE CAUSE HEARING IN ORDER TO ESTABLISH THE STATUS OF THE APPELLANT'S PAROLE IS FURTHER EVIDENCE OF SDDC'S LACK OF REGARD FOR THE APPELLANT'S DUE PROCESS RIGHTS, GADDY V. MICHAEL, UNITED STATES COURT OF APPEALS FOURTH CIRCUIT 519 F. 2d 669 and U.S. V. TIPPENS, 39 F. 3d 88, 90 (5th CIR 1994). (see pg. 7 OF APPELLANT'S INITIAL BRIEF),

ARGUMENT III

IS THE ADMINISTRATIVE LAW COURT AND SDC, D.C. IN ERROR BY NOT IMPLEMENTING FROM JUNE 1, 1998 - NOVEMBER 2, 2015 (17 YEARS 5 MONTHS) WHICH WAS THE TIME SHE SERVED WITHIN THE TENNESSEE DEPARTMENT OF CORRECTIONS WITH A PAROLE VIOLATION HOLD PENDING DUE TO NOT BEING AFFORDED A PROBABLE CAUSE OR A REVOCATION HEARING.

THE APPELLANT WAS INCARCERATED WITHIN THE TENNESSEE DEPARTMENT OF CORRECTIONS FROM JUNE 1, 1998-NOVEMBER 2, 2015 (17 YEARS 5 MONTHS), THE APPELLANT ARGUES THAT THIS TIME SHOULD BE APPLIED TOWARDS THE REMAINDER OF HIS ORIGINAL SOUTH CAROLINA SENTENCE, SINCE THIS PERIOD WAS SERVED WITH THE SANCTION OF THE "PAROLE VIOLATION" LOOMING, DUE TO SCDC'S DISPOSING OF THE APPELLANT'S DUE PROCESS RIGHTS BY NOT CONDUCTING A REVOCATION OR AT THE VERY LEAST A PROBABLE CAUSE HEARING. THE INITIAL PAROLE VIOLATION HOLD ~~WAS~~ ^{WAS} INSTATED ON MAY 28, 1996, AND REMAINED INTACT UNTIL NOVEMBER 2, 2015, WHICH WAS WHEN THE APPELLANT FACED THE ADMINISTRATIVE BOARD OF THE SOUTH CAROLINA BOARD OF PARDONS AND PAROLE. UNTIL THAT POINT NO ASSESSMENT HEARING HAD BEEN HELD TO ADDRESS THE STATUS OF HIS PAROLE. U.S.C.A, Amend XIV § 1-DUE PROCESS "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW." ALSO see FONES V. U.S. PAROLE COMMISSION 20 F.Supp, 3d 1. THE APPELLANT'S DUE PROCESS RIGHTS WERE UNOFFICIALLY ABROGATED BEFORE AND AFTER TRIAL AND SENTENCING, DUE TO HIM NOT BEING AFFORDED THE OPPORTUNITY TO A PROBABLE CAUSE OR A REVOCATION HEARING, SCDC'S FAILURE TO SEEK ADJUDICATION OF THE PAROLE VIOLATION UNTIL IT WAS CONVENIENT FOR THEM TO DO SO VIOLATED THE APPELLANT'S PROTECTED LIBERTY INTEREST UNDER THE FOURTEENTH AMENDMENT. see WOLFF V. McDONNELL, 418 U.S. 539, 94 S.Ct. 2963, 41 L.E. 20935 (1974) and U.S.C.A. Cont Amend V: DOUBLE JEOPARDY, 2d 1539 CONSTITUTIONAL LAW (K) 2789 DOUBLE JEOPARDY (K) 21. (see pg. 12 and 13 OF THE APPELLANT'S ORIGINAL BRIEF)

ARGUMENT IV

SHOULD THE TIME IT TOOK TO EXTRADITE THE APPELLANT FROM TENNESSEE BACK TO SOUTH CAROLINA WHICH WAS FROM NOVEMBER 2, 2015 to JANUARY 20, 2016 ⁽⁷⁴⁾ ~~74~~ DAYS BE AVAILABLE FOR APPELLANT REVIEW.

IN THE ALC'S AUGUST 24, 2017 ORDER IT STATED THAT "THE APPELLANT DID NOT SPECIFICALLY RAISE THE ISSUE OF HIS EXTRADITION TIME WITHIN HIS STEP 1 or STEP 2 GRIEVANCE."

THE RESPONDENT MAKES NO ARGUMENT IN IT'S INITIAL BRIEF TO THIS COURT ON THIS ISSUE, HOWEVER, THE APPELLANT CONTINUES TO ASSERT THAT HIS ARGUMENT ON THIS ~~ISSUE~~ ^{Issue} WAS

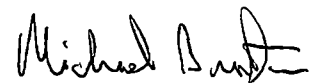
~~was~~ PRESENTED IN DETAIL TO THE ALC ON pg.2 OF HIS INTIAL BRIEF TO THE ALC UNDER "STATEMENT OF FACTS" and ON pg.1 UNDER "PAROLE PROVISIONS".

CONCLUSION

"THE CALCULATION AND APPLICATION OF MANDATORY CREDIT FOR TIME SERVED IS THE ADMINISTRATIVE DUTY OF THE DEPARTMENT." S.C. CODE ANN. § 24-13-40 (Supp. 2016). SCDC IS ADAMANT THAT THE APPELLANT'S SENTENCE "HAS BEEN CALCULATED CORRECTLY," HOWEVER, IT FAILS TO OFFER AS PROOF THE METHOD OR MANNER INWHICH THE REMAINDER OF THE APPELLANT'S SENTENCE WAS CALCULATED? NOTHING WHITHIN THE RECORD ON APPEAL OR THE RESPONDENT'S DESIGNATION OF MATTER CAN BE REMOTELY CONSIDERED AN OUTLINE IN SUPPORT OF IT'S POSITION, THUS ~~SCDC~~ SCDC'S DECISION (S) ARE NOT SUPPORTED BY THE QUANTUM OF EVIDENCE AS PRESCRIBED BY THE STATUTE (S) OR LAW (S) UNDER WHICH JUDICIAL REVIEW IS PERMITTED.

THE RECORD ON APPEAL AS WELL AS THE RESPONDENT'S DESIGNATION OF MATTER IS ALSO VOID OF ANY EVIDENCE OF A PROBABLE CAUSE OR REVOCATION HEARING BEING CONDUCTED BEFORE NOVEMBER 18, 2017 ON THE APPELLANT'S BEHALF. SINCE THE PAROLE VIOLATION "HOLD" WAS IMPLEMENTED ON MAY 28, 1996, IT CAN BE CONCLUDED THAT SCDC IN IT'S ARROGANCE IMPEDED ON THE APPELLANT'S DUE PROCESS RIGHTS, THE APPELLANT PLEADS WITH THIS HONORABLE COURT TO BE RELEASED FROM ILLEGAL CONFINEMENT.

Respectfully Submitted,



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MA-41

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