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

MICHAEL BRAXTON 119081 ********** APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ********** RESPONDENT

FINAL BRIEF OF APPELLANT

MICHAEL BRAXTON 119081
PRO SE
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.

STATEMENT OF THE FACTS

The Appellant, Michael Braxton plead guilty on October 24, 1983 to Criminal Sexual Conduct, in Anderson County, South Carolina.

He was sentenced November 17,1983 to 30 years imprisonment within the S.C.D.C. (Case No.: 1983-GS-04-801).

On March 31,1994, after serving 10 years 4 months appellant was Paroled via interstate compact to the state of Tennessee.

The Appellant remained on successful Parole Supervision from March 31,1994 until April 16,1996, at that time he was accused and incarcerated in Tennessee on an "unrelated" charge.

On May 28,1996 a "Parole Violation" warrant was placed on the Appellant (This eliminated bond possibly).

On March 23 & 24, 1998 the Appellant had a trial by jury and was convicted of "orally" sexual assualting a 20 year old woman in a Nashville hotel room, that stated Twice under oath that she "could have left Anytime she got ready!"

The Appellant was sentenced to 23 years for One Count of Rape on May 1,1998.

On June 1,1998 Appellant was transferred to the Tennessee Department of Corrections ("T.D.O.C."). From the time in which the Appellant was served with a "Parole Violation" warrant on May 28,1996 while in carrcerated at the Davidson County Criminal Justice Center, until his transfer to T.D.O.C., he had not received a "Revocation Hearing" or any status hearing concerning his parole.

On June 8,1998 a second "Parole Violation" warrant was placed on the Appellant while in T.D.O.C. custody.

The Appellant served from June 1, 1998 until November 2, 2015 (17 years 5 months) during which time he still received NO "Revocation Hearing," nor did he receive Any notification concerning the status of his Parole for the entire span of his incarceration within T.D.O.C.

On November 18,2015 the Appellant went before an Administrative Board of the South Carolina Board of Pardons and Parole.

On January 20,2016 the Appellant went before the Full Parole Board, at which time he was remanded back into S.C.D.C. custody, after serving 73 days in Anderson County.

The Appellant addressed throughout, then filed a formal Sept #1 grievance on December 22, 2016 pertaining to the miscalculation of his sentence. (This action was denied).

On February 1,2017 the Appellant filed a Sept #2 grievance in response to the denial of his Step #1 action. (This complaint was denied as well).

On or about April 3,2017 the Appellant filed a "Notice of Appeal" to the Administrative Law Court.

On August 24,2017 the Administrative Law Court filed its order affirming S.C.D.C. position that the Appellants sentence "has been calculated correctly."

The Appellant's "Notice of Appeal" was filed in the Court of Appeals September 14, 2017.

ARGUMENT I

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 APPELLANT WAS ON "PAROLE" (NOT HOUSE ARREST), TOWARDS THE REMAINDER OF HIS ORIGINAL SENTENCE

The Appellant argues that while he was on successful "Parole" supervision (R. pg. 5) from March 31,1994 until May 28,1996, none of the conditions he had to abide by included "HOUSE ARREST." S.C.D.C. stated within its response on the Appellant's Step #2 grievance dated March 3, 2017 ( ) "I have reviewed your concern. In your grievance you stated that you met with SCDC Classification Staff and discussed your concern that jail time, pre-trial time in Tennessee and house supervision time have not been included in your sentence at SCDC." (R. pg. 2)

Nothing within the "record on appeal" supports SCDC's assertion that the Appellant had . . condition upon release of (House Arrest), and the Appellant has not presented any issue pertaining to (House Arrest) throughout the appeal process, because the issue does NOT exist. However, the issue of SCDC not applying the time the Appellant was on successful "Parole" supervision has been at issue throughout his appeal process, and he has and (R.pg.1,2) still relies on Sanders v. McDougal, (S.C.1964) 299 S.C. 160,134 S.E.2d 836 (A prisoner upon release on Parole continues to serve his sentence outside of prison walls). "An order revolking parole simply restates a defendant to the status he would have occupied had this form of leniency never been extended to him." (The effect of such revocation does not erase or transcend the effect of the original sentence). Additionally, the Appellant has and still argues that SCDC is in violation of its own Policy concerning the application of Earned Parole time: Inmate Record Plan OP-21.09 (Release Calculation) 14.9.3 Active Parole, states: "Inmate is serving a conviction under parole supervision and is accruing day-for-day credit towards sentence." The Appellant also continues to argue that SCDC is also in violation of the South Carolina Board of Parole Pardons policy that specifically addresses the "manatory" application of Earned Parole time ( ), listed as "The Effect of Revocation" which states; : The offender is remanded to the custody of the Department of Corrections to serve the remaining unserved part of his/her sentence, less any credit for time served on Parole before the "Revocation." (R. REPLY BRIEF TO ALC, PG. 2)

The Administrative Law Court ("ALC") appears to have misconstrued Appellant's argument by citing S.C. Am §24-13-40 (Supp.2016) as the controlling influence in its decision in the matter. It also appears to be confused as to whether the Appellant was ever on (House Arrest)? (pg.#3, ¶ 2 of ALC's Final Order) State v. Ellis. 397 S.C. 576 Supreme Court of South Carolina (Term "Parole" means a conditional release from imprisonment and does not suspend the running of a prisoner's sentence). Also see, Crooks v. Sanders, 123 S.C. 28, 115 S.E. 760,28 ALR 940.

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ARGUMENT II

IS THE ADMINISTRATIVE LAW COURT AND SCDC IN ERROR FOR NOT INSTATING FROM MAY 28,1996 - MAY 1,1998 (24 MONTHS), WHICH WAS THE TIME 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

The Administrative law court affirmed SCDC's decision not to credit the appellant the time he served prior to trial and sentencing, which was (R.ALC FINAL ORDER) from May 28,1996 - May 1,1998. The ALC presented S.C. Code Ann. §24-13-40 (Supp. 2016) in its rationalization of this issue. It states: "The computation of the time served by prisoners under sentences imposed by the courts of this state shall be reckoned from the date of the imposition of the sentence.. In every case in computing the time served by a prisoner, full credit against sentence shall be given for time served prior to trial and sentencing." State v. Sanders, 251 S.C. 431,163 S.E.2d 220 - By an act approved April 6,1973 58 Stats 181, the General Assembly amended Section §§ 11 of the Code by adding the following:

> In every case in computing the time served by 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 the prisoner at time was imprisoned prior to trial 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 Appellant was incarcerated at the Davidson County Criminal Justice (R.pg.7,8,9,10) Center in Nashville, Tn., from April 16,1996 until June 1,1998. On May 28,1996 a "Parole Violation" warrant was placed on the Appellant, and this warrant (R.pg.5,6) remained intact for the duration of his incarceration at Davidson County This "hold" was placed on the Appellant by the State of South Carolina Board of

Paroles and Pardons for allegedly violating the conditions of his Parole,(R. pg.8) and it was placed on him "prior" to trial and sentencing. This being the case, it must be concluded that the Appellant's South Carolina sentence is First! Then after being tried by jury then subsequently convicted of Forcably "Orally" Raping a (20) twenty year old women (without use of weapon) in a Nashville hotel room, he was sentenced to to serve (23) twenty-three years within the Tennessee Department of Corrections as his SECOND offense. (Case No. 97-B-1350). A HOLD IS NOT A VEHICLE THAT GRANTS AUTHORIZATION TO SUSPEND, FRUSTRATE OR ULTIMATELY EXTINGUISH ONE'S CONSTITUTIONAL DUE PROCESS RIGHTS.

The Appellant now continues his appeal under S.C. Code Ann. §24-13-40 which states in relevant portion; (2) "When a prisoner is serving a sentence for one offense and is awaiting trial and sentence for the SECOND offense.."In which case he shall not receive credit for the SECOND offense." The Appellant also presents established case law beginning with State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974), which states; "The right to credit under statute is not limited to the time spent in prison or jail in a jurisdiction, but also includes the time spent in another jurisdiction in which he was apprehened, preliminary to being sent back for trial, and time during which he was arrested or detained in connection with the offense for which he was subsequently tried." See People v. State, 141 Mich. App. 610 367 N.W. 2d 430 (1985) (Where a defendant is arrested in a foreign county on unrelated charges, warrant was issued on current charge, at some point later "hold" placed on defendant, and warrant was executed, thereafter, defendant entitled to credit for time served, also at PCR hearing the DOC Representative testified the DOC gives credit for time served after arrest. Also see, Goings v. Missouri v. Dept. of Corr.,6 S.W. 3d 906 (MO 1999) (Inmate whose parole was revolked for prior offense when he was arrested for a subsequent offense entitled to credit for time spent on both prior and current offenses). Travis v. State, 724 SO. 2d 119 (Fla. App. 1 Dist. 1998) (At the time arrest warrant is tranmitted or issued to another county and that county incarcerates the defendant on unrelated charges, defendant is deemed to be in custody on the warrant from both counties and therefore entitled to jail credit on concurrent sentencing). The Appellant also seeks consideration under Allen v. State, 529 S.E.2d 541 (S.C.2000) and Clark, 321 S.C. at 380 n. 3, 468 S.E.2d at 655 n. 3 (South Carolina detainer -Constructively in South Carolina Custody).

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Additionally, the Appellant argues that due to the State of South Carolina's failure to orchestrate then conduct a "Revocation" hearing or at the very least a "Probable Cause" hearing, while the Appellant was incarcerated from May 28,1996 through May 1,1998 (which was before trial and sentencing), had an inescapable "prejudicial" effect on the Appellant that was "catastrophic". The Board of Parole, after the issuance of its "Parole Violation" warrant, is obligated, as a matter of Fundamental Fairness, to execute with reasonable dispatch its Parole violation's warrant and, after the warrant has been executed, to accord to the parolee his due process rights to a hearing within a reasonable time. 18 U.S.C.A. §4207 Gaddy v. Michael, United States Court of Appeals, Fourth Circuit July 7,1975 519 F.2d 669.

The U.S. Court of Appeals for the Fifth Circuit has recognized that a delay in executing the violator's warrant may frustrate a probationer's due process rights if the delay undermines his ability to contest the issue of the violation or proffer mitigating evidence. United States v. Tippens, 39 F.3d 88,90(5th Cir 1994).

The Appellant argues that the indifferance exhibited by the State of South Carolina, by electing to forfeit the Appellant's due process right to a "Revocation" or at the very least a "Probable Cause" hearing before trial and sentencing inflicted a stifling result, this result insured that the Appellant would have NO opportunity to proffer mitigating evidence in defense of serious allegations lodged against him. Moreover, he was unable to protect himself from his "retained" counsel William C. Roberts Jr., who was ultimately "disbarred" for "inflicting irrepairable harm to the public because of his neglect in client matters." ( ) Tennessean article titled "Lawyer's license lifted, neglect in clients cited"). Also see (Ex. D) Supreme Court of Tennessee order titled:"Nashville Attorney Suspended" May 2003.

Mr. Roberts was admonished by the Board of Professional Responsiblity on May 22,1996, he then received "Public censure" from the Board on May 20,1997, on January 3, 1999 he was temporarily "Suspended" from the parctice of law by the Tennessee Supreme Court. He was reinstated conditionally by the Supreme Court on March 30,1999, Mr. Roberts then was suspended AGAIN from the practice of law by the Supreme Court on JUly 10,2000. This "suspension" was for (90)

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ninety days in addition to an "indefinite" suspension. - "Petition For Discipline," under Prior Discipline pg.8 L's 86-91) Also See ("Conditional Guilty Plea" in March of 2003) as well as the correspondence from the Board of Professional Responsibility of the Supreme Court of Tennessee to the Appellant in notification of the progress of the Appellant's complaint No: 22898-5-CH . The Appellant's complaint was resolved by the "Order OF ENFORCEMENT filed on May23,2003 , and the "AGREED JUDGMENT" filed on April 21,2003

The Appellant retained Mr. Willim C. Roberts Jr. in April of 1996 while incarcerated at Davidson County, since he was confined, was not from the area, and had no past legal difficulties, he was forced to accept a recommendation. This "Recommendation" was more detrimental to the Appellant than the allegations that breached his liberty. To term Mr. Roberts representation as "ineffective" would be truly "shallow" considering his "abandonment" of relevant evidence, and disregard of "obtainable" evidence on the Appellant's behalf.

From the very beginning of Mr. Roberts tenure as the Appellant's counsel, he encountered great difficulty in reaching Mr. Roberts with any regularity. The Appellant could only call collect (which were REFUSED 95% of the time), or seek correspondence by mail (in which ONE letter was responded to in 1997). Mr. Roberts office was (5) minutes away from the Nashville Criminal Justice Center.

After the Preliminary hearing on April 22,1996, Mr. Roberts informed the Appellant that he would be employing a Private investigator to assist on the Appelant's case. He said his name was O. Bobby Brown and he would be to see the Appelant soon. It was a MONTH before he saw Mr. Brown, and it was "TWO" MONTHS before he saw or heard from Mr. Roberts again! The Appellant did not speak or see Mr. Brown again until after he had been remanded into the custody of the Tennessee Department of Corrections. On July 21, 1998, Mr. Brown informed the Appellant that he had not spoken to Mr. Roberts since 1997, and this was in spite of his consistent effort to catch him. He also stated he had complied "relevant" FACTS IN THE Appellant's cause, that Mr. Roberts had failed to retreve, and that Mr. Roberts had failed to pay him the

balance of his fee. The Appellant submits correspondence he received from Mr. O. Bobby Brown as .

Mr. Roberts insisted throughout that the investigation was "ongoing," the Appellant had no way of confirming the validity of this, due to the imposed pre-trial incarceration. In fact, the only evidence of any investigation EVER occurring is featured in the ONLY letter the Appellant received from his counsel in February 1997 . The tone of this lone correspondence reflects the attitude and arrogance of Mr. Roberts, the Appellant's counsel knew the Appellant was defenseless:

The Appellant received this correspondence after meeting with Mr. Roberts, at that time he was informed by his counsel that his trial date was April 22,1997. When this date arrived Mr. Roberts stated "he wasn't ready to go to trial," his explanation was he had not had time to review the newly acquired "Psychiatric files" of the witness. This delay appeared to be warranted.

In July of 1997 the Appellant had a re-indictment hearing, this hearing had to be re-scheduled, since Mr. Roberts failed to attend the hearing. Upon re-scheduling this hearing at which time Mr. Roberts was in attendance, a "second" Trial date was scheduled for the Appellant Agugust 11, 1997. This trial date was also postponed by Mr. Roberts for "lack of preparation." The Appellant was set a THIRD trial date for October 13, 1997, this date also was not convenient for Mr. Roberts, as he was unprepared yet AGAIN!

The Appellant had a FOURTH TRIAL DATE SET FOR March 23, 1998, but he had a Rule 412 Hearing on March 20,1998. At this hearing the newly appointed Trial Judge disallowed all psychiatric records, and for bade Any reference at trial to these records. He stated that "they were not relevant"? He made this decision inspite of the summary letter submitted to the Court in relation to the witness, from Ms. Pamela Auble, PH.P. .

On the Appellant's Fourth trial date of March 23,1998 Mr. Roberts was still unprepared, as he failed to adequately confront the "Controversial and Contradicting" statements made by the witness under oath at the preliminary hearing, that only became more contradictory at trial.

1.) The witness testified at the preliminary hearing that the Appellant "penetrated her with his penis," however, at trial there was only a lengthy testimony and demonstration on how she was able to prevent penile penetration. , T.B.I. Lab Report).

2.) The witness testified at the preliminary hearing and at trial that "she took her pants off to be comfortable" and "it was her decision." Her testimony indicated that she saw nothing wrong with this action, even though she and the Appellant had never been intimate.

3.) Witness testified at trial that the Appellant left the sleeping area, went in the restroom to retrieve a condom at her request. When asked "why she didn't try to exit the "? She stated "she wasn't thinking about that at the time"?

4.) The witness testifies at the preliminary hearing and at trial that "she could have left the anytime she got ready," and that the Appellant "would have taken her ANYWHERE she wanted to go." Which he tried to do!

5.) Witness stated at trial that the Appellant was able to penetrate he vagina with his "tongue," yet she prevented him from penetrating her with his penis?

6.) Witness testified at the Preliminary hearing and at trial that "she had NO choice but to stay regardless", and that "she NEVER considered leaving."

7.) Witness testifies at the Preliminary hearing that she "NEVER felt threatened" by the Appellant, yet at trial she stated "she was so terrified."

8.) Witness testified at the Preliminary hearing and within her initial police statement about a "past sexual experience"? This issue was NEVER explored or CLARIFIED.

9.) The Appellant desperately needed to testify on his own behalf, but he reluctantly took the legal advice rendered by his Trial counsel William C. Roberts Jr. This advice was erroneous, and exemplified either his lack of pre-trial research or his lack of understanding of the law in the Matter? See Lone correspondence from Mr. Roberts Whereby, he advises the Appellant "not to testify," he stated "if he did his South Carolina conviction could be used to impeach his testimony." In his desire to be judged on the present and not the past, the Appellant heeded to what he assumed was sound legal advice. However, after trial during the Appeals process the Appellant discovered the citation of State v. Rickman, 876 S.W.2d 828,830 (Tenn.1994) this case law prevented the prosecution from using prior convictions involving "similar offenses" as impeachment evidence. Also see, Rule 609 Tenn. Rules of Evidence.

10.) The witness confused her trial testimony to the extent that she was forced to call a "RECESS" in the middle of defense cross-examination; which appeared to be fine with Mr. Roberts.

The consistency of Mr. William C. Roberts, Jr. was his in-ept Representation in regard to the Appellant, was he INEFFECTIVE?" "ABSOLUTELY"!! But more importantly, his presence as the Appellant counsel was a chief enabler to the Tennessee conviction.

The outline presented to this Honorable Court by the Appellant illustrating the complete disregard of the Appellant by Mr. Roberts is by NO means a complete summation of the Contraversial and Contradictory testimony of the witness or the anemic representation of Mr. William C. Roberts, Jr. It was agonizing for the Appellant to be confined and accused, facing Decades in prison, gradually discovering that his "retained" counsel had NO regard for the Appellant's welfare, only his own.

The anxiety within this circumstance was compounded by the Appellant's inability to make bond, due to the absence of a "Revocation" hearing, or at the very least a "Probable Cause" hearing, this in-action brought about a "Prejudicial" effect that was no doubt devastating!

"To entitle parolee to relief, delay in execution of Parole Violation warrant must be unreasonable and prejudicial." Graddy v. Michael, U.S. Court Of Appeals, Fourth Circuit 519,F.2d 669. In order to comply with due process , Parolee is entitled to certain procedural safeguards before Parole may be revoked: he must be afforded a preliminary "Probable Cause" hearing when he is arrested for a Parole Violation and a more thorough "Revocation" hearing within a reasonable time after he has been taken into custody. 18 U.S.C.A. § 4205-4207 Constitutional Law (K) Parole.

The Appellant was prejudiced by the frustration of his 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.

ARGUMENT III

IS THE ADMINISTRATIVE LAW COURT AND S.C.D.C. IN ERROR BY NOT IMPLEMENTING FROM JUNE 1,1998 THROUGH NOVEMBER 2,2015 (17YEARS 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.

The Appellant argues that from June 1,1998 through November 2, 2015, which was the time he was committed to the Tennessee Department of Corrections (17 years 5 months), should be applied towards his original South Carolina sentence. This period was served with the sanction of the "Parole Violation" hold looming, while being deprived his right to due process throughout. U.S.C.A. Amend XIV § 1- Due Proc ***"nor shall any state deprive any person of life , liberty or property, without Due Process of Law". Also see; Jones v. U.S. Parole Commission, 20 F. Supp. 3d 1 The Appellant's due process rights were unofficially abrogated before trial and sentencing, and throughout the term of incarceration he served within T.D.O.C. This is the case, since he was NEVER extended his right to a timely "Probable Cause" or "Revocation" hearing.

The Administrative Law Court and S.C.D.C. cited Sartain v. Pitchess, 386 F.2d 806, (9th Cir.1966) and Cook v. Atty. Gen., 488 F.2d 667,671 (5th. Cir.1974) as their rational governing the omission of the Appellant's Earned Credit. However, the "prejudice" suffered by the Appellant before trial and sentencing, and during his commitment to the Tennessee Department of Corrections places this determination into question.

True, the Appellant was denied entrance into certain programs, and was held in higher custody level for the entirety of his sentence in T.D.O.C., but more definitively, his Due Process rights were grossly neglected by S.C.D.C. as the agency chose to forgo the adjudication of the "Parole Violation" until it was convenient for them to do so. "The statutory right to sentence related credits is a protected "liberty" interest under the Fourteenth Admend. entitling an inmate to minimal due process to ensure the State-created right was not arbitrarily abrogated." Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.E. 20935(1974) U.S.C.A. Const. Amend. V-Double Jeopardy; F.2d 1539 Constitutional Law (K) 2789 Double Jeopardy (K) 21 (Assuming that decision of Bureau of Prisons (BOP) to deny defendant credit for time served in custody, as mandated by statute, was "punishment" for double jeopardy purpose ie, unlawful punishment).

ARFGUMENT IV

SHOULD THIS 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 (79 DAYS), BE AVAILABLE FOR APPELATE REVIEW.

The Administrative Law Court states in its August 24,2017 order that the Appellant did not specifically raise this issue of his extradition time (R.pg.1, 2) within his Step #1 or Step #2 grievance. However, a footnote at the bottom of pg.#4 of the ALC's order states; "Appellant's Step Two grievance contends he should receive credit for the time he was incarcerated in Tennessee, and states, in parenthesis," this includes the time served during the extradition process." "However, this reference does not bring the issue of time Appellant was held in Anderson County, South Carolina, before this Court."

The Appellant argues that he was as "specific" on this form with this issue, as he was with EVERY issue he presented on that form, all of which, were later presented by brief before Administrative Law Court. The specific's of the actual time period involved was addressed on pg. #2 of the Appellant's Initial Brief listed under "STATEMENT OF FACTS," and again on pg. #1 under the "Parole Provisions." (R, ALC INITIAL BRIEF, pg 1, 2)

The Appellant concedes his confusion of the ALC's unwillingness to review this issue, he being Pro Se petitioner would now ask for clairification on this issue, before this Honorable Court.

CONCLUSION

THE RESPONDENT REMAINS UNMOVED IN IT'S 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 STATUS WITHIN SCDC. (R. pg. 12-13).

DURING THE APPELLANT INITIAL CLASSIFICATION AFTER BEING REMANDED BACK INTO SCDC, HE WAS RENDERED THE ERRONEOUS EXPIRATION DATE OF JUNE 22, 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 EARNED WORK CREDITS HAD BEEN PRE-CALCULATED INTO HIS SENTENCE AT 6 SIX DAYS PER MONTH. THIS ADDITIONAL ERROR HAS THE APPELLANTS GOOD TIME AND EARNED WORK CREDITS 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 OF THE APPELLANT BEING SENTENCED PRIOR TO JANUARY 1, 1996. (R. pg. 12-13)

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 IN TENNESSEE. (R. pg. 12-13)

SCDC HAS FAILED TO ACKNOWLEDGE THIS STATUE ON THE APPELLANT'S BEHALF AS IT MALICIOUSLY CONTINUES IT'S REFUSAL TO OBSERVE THE MANDATED STATUTES, CASE LAW, POLICIES, PROCEDURES AND PROTOCAL PRETAINING TO THE APPELLANT'S DELINQUENT EARNED CREDIT.

AT THIS POINT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS NOT ONLY RELIEVED ITSELF FROM IT'S OBLIGATION TO ABIDE BY ESTABLISHED STATUTES, CASE LAW, POLICIES, PROCEDURES AND PROTOCAL, IT HAS ON IT'S OWN ACCORD IN ESSENCE, ASSIGNED THE APPELLANT TO A NEW SENTENCE ABSENT THE CUMBERSOME BUT ESSENTIAL REQUIREMENT OF DUE PROCESS. (R. pg. 12-13)

"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 PERSISTENT FROM THE ONSET, AS IT VIOLATED THE APPELLANT'S CONSTITUTIONAL DUE PROCESS RIGHTS WELL BEFORE HE WAS FOMALLY REMANDED BACK INTO SCDC, AS IT VIOLATED THE APPELLANT'S PROTECTED LIBERTY INTREST UNDER THE 14th AMENDMENT ENTITLING HIM TO DUE TO MINIMAL DUE PROCESS.

BY NOT AFFORDING THE APPELLANT A PROBABLE CAUSE OR REVOCATION HEARING FROM MAY 28, 1996 THROUGH NOVENBER 2, 2015 WHICH WAS BEFORE AND AFTER TRIAL AND SENTENCING, 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 GRIEVIOUS LOSS TO THE APPELLANT DUE TO THE DISADVANTAGE 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

Michael Braxton

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DATE April 6, 2018

THE STATE OF SOUTH CAROLINA IN THE
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

MICHAEL BRAXTON 119081
APPELLANT,

V.

PROOF OF SERVICE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RESPONDENT.

APPELLANT CASE NO.2017-001964

I HEREBY CERTIFY THAT (2) Two COPIES OF THE FORGOING DOCUMENT(S) Re-Submission of Final Briefs WAS ON THIS DATE SERVED ON THE FOLLOWING INDIVIDUAL(S) BY PLACING A COPY OF THE SAME VIA INSTITUTIONAL U.S. MAIL SERVICE.

DATE: April 6, 2018

CC SOUTH CAROLINA COURT OF APPEALS
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