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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
SHIRLEY C, ROBINSON, ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2018-000035
Docket No. 17-ALJ-04-0591-IJ

ISIAH JAMES, JR.,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS (SCDC),

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO SOUTH CAROLINA COURT OF APPEALS

Other Counsel of Record:

Christina Catoe Bigelow
Office of General Counsel
Post Office Box 21787
Columbia, SC 29221-1787

Isiah JAMES, Jr.
1810 O Street
Brunswick, Georgia 31520

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CERTIFICATE OF PETITIONER

Petitioner hereby certifies that the petition for rehearing was made and finally ruled on by the court of appeals on 9 May 2018.

QUESTION(S) PRESENTED

I. Thereafter the Court of Appeals issued the 30 June 2017 'Order' (FOR THE COURT), was the Court of Appeals in error issuing the 2 February 2018 'Order' (FOR THE COURT) denying "in forma Pauperis" status (App. p. 15) in the subsequent appeal raising ex post facto and due process violation on earn work credit(s) (EWC's), statutory goodtime (SG) statutory goodtime earned (SGE) credit(s) to which liberty interest(s) are pertinent or relevant?

II. Has petitioner's sentence(s) been calculated wrongfully under statutory law(s) for SG, SGE and EWC's?

STATEMENT OF THE CASE

James who is serving a long-term sentence now on parole release filed grievance(s) while he was serving his sentence(s) therein South Carolina Department of Corrections (SCDC) since there is specific relevance he begins the point to the 12-15-12 decision on the step 2 grievance concerning EWC's (App. p. 4) which was granted, approved or upheld. That what is at issue most of all herein is the 10.23.16, 12.16.17 grievance(s) step 1, 5.23.17 step 2; 'Order of Remand' of 6-15-17 from the Administrative Law Court (ALC). (App. p. 8)

Thereafter, the 'Order of Remand' petitioner appealed to South Carolina Court of Appeals which issued the 6.30.17 Order claiming "order is interlocutory." (App. p. 9) SCDC issued the 10.23.17 response that was appealed to South Carolina Court of Appeals so ALC issued the 12.29.17 'Order of Dismissal'; then the subsequent 1.12.18 Order. The Court of Appeals issued 2-2-18 Order denying in forma pauperis and 5-9-18 'Order' denying rehearing and consideration thereafter.

ARGUMENT(S)

I. THE COURT OF APPEALS AERRED DENYING PAUPER STATUS WHEN LIBERTY INTEREST(S) VEST STATUTORY GOODTIME CREDITS AND EX POST FACTO CLAUSE COVERS EWC'S

The Court of Appeals erred denying pauper status and further denied due process regarding the petition for rehearing. The ALC issued the 12-29-17 Order holding, "Appellant failed to exhaust his administrative remedies prior to filing his appeal, the ALC lacks jurisdiction to review" (App. p. 13) and failing to acknowledge the ALJ Robinson has set forth in the Order of Remand of 6.15.17,

"the Department issued a final agency response denying Appellant's grievance" (App. p. 8)

Then ALC issued a subsequent order of 1.12.18 writing, "the Department informed the Court that Appellant had gone through the Department's internal grievance process prior to filing his appeal with this court." (App. p. 14)

The Court of Appeals ignored the liberty interest associated with the state-created right(s) SG on 2-2-18 (App. p. 15) and did the same there-with the petition for rehearing. Al-Shabazz v. State, 527 S.E.2d 742, 7 (2000); see also Steele v. Benjamin, 606 S.E.2d 499 (Ct.App. 2004)

2. PETITIONER'S SENTENCE(S) HAVE BEEN WRONGFULLY CALCULATED FROM MANY POINT(S) OF VIEW

The Court of Appeals has on more than one occasion refused to address the merit(s) of whether James's sentence(s) has been miscalculated (committing errors of law) and on the current occasion pointed that he is not entitled to proceed in forma pauperis which is again contrary to the rule(s) of law when petitioner who has been released from imprisonment really has not been able to gain sufficient employment to defray those legal cost(s) and expense(s) which is also a collateral consequence of imprisonment (although skilled, employer are reluctant to employ x-coms) so he asks the Court to recognize the fundamental legal right to access to the court(s) for all and his sentences have been wrongfully calculated.

He goes to the step 2 grievance that was upheld on EWC's; it mentioned, "Your projected release date has moved from 12/12/23 to 5/12/23" (App. p. 14) The Agency's calculation therein was wrong in more than one way; first, prior to policy change he was assigned the "EWC LEVEL 2f7" and the record(s) showed "PROJ. MAXOUT DATE: 9-16-2020" on 1-20-97. (App. p. 2); second, even at the determination of 2-15-12 when he was successful and the Agency applied the "EWC Level 2"; there was mis-calculation(s) therewith; level 2 earns 1 day for ever 2 days worked,

from December 1997 to September 2006 where he earned 3f5, 6-7 days a month that was corrected to 2f5, 10 days a month—the max-out date should have declined or fall more than 6 or 7 months.

Both the Agency has failed to apply statutory goodtime (SG) adjustment(s) and what James refers to as statutory goodtime earned (SGE) which is easy to understand and apply. Busby v. Moore, 498 S.E.2d 883 (1998) (2/5 time served for max-out, at 884) Petitioner is being denied the liberty interest on SGE where the Agency failed to make adjustment(s) concerning the sentences expiration date for nearly a generation as it is set forth in the grievance step 1 (App p. 507b) The Agency failed to acknowledge/notice that James is serving 365 and 366 days a year for nearly four (4) decades. (See SCDC Offender Management System (OMS) Release Date Screen of 1-13-99 (App. P. 3) which showed: Total GT Days Earned ... 004740, again App p. 3).

The document reflected GT Days Earned for nearly 20 years: 20 • 12*240 months times 20 days equals 4800 days. The other part of OMS revealed, should show 3 infraction(s), loss of 20 days for each infraction (or ticket) that he could not have restored, given back. The OMS does not show any adjustment(s) pertaining sentence(s) expiration date at 11-26-2023. (App p. 3) The extra 5 and 6 days a year add-up where James served 39 years: 39 • 5*195 days. 366 days in a leap year, 1 day every 4 years from 1980 to 2016*10days; total 200 days @ 20 days per month equals almost 140 days or 4 2/3 months which has not been deducted as SGE from max-out date; 200 extra days served is almost 7 months.

He asserts that he has served 40% of 85 year sentence and if Busby supra is correct application; he is eligible for statutory pardon application under 24-21-930 of the Code of Laws.

There is also the issue of wrong calculation of sentence expiration date associated with liberty interest of custody change that is relevant to EWC advancement under the Al-Shabazz era SCDC policy change(s).

CONCLUSION

Petitioner urges the Court to grant the petition herein and compute the relevant correct sentence calculation(s).

This 7 day of June 2018.

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s/ Isiah James, Jr.
Isiah JAMES, Jr.
1810 O Street
Brunswick, Georgia 31520-5445

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the PETITION FOR WRIT OF CERTIORARI etc. to be mailed, postage prepaid, to the parties set forth below this 8th day of June 2018.

Hon Jenny A. Kitchings
Clerk, SC Court of Appeals
POB 11629
Columbia, SC 29211
Christina C. Bigelow
Post Office Box 21787
Columbia, SC 29221

s/ Leiah James, Jr

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Isiah JAMES, JR
1910 O Street
Brunswick, Georgia

31520-5445

CLERK OF COURT
SC COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

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