

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

JUL 19 2018

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
H.W. Funderburk Jr., Administrative Law Judge

Case No. 2017-000694

Jerome A. Owens Sr.

Appellant,

v.

South Carolina Department of Corrections

Respondent,

THE APPELLANT'S MOTION FOR REHEARING

The appellant, Jerome A. Owens Sr., pursuant to Rule 221 SCACR, moves this court to reconsider and hear the underlying appeal in its entirety and to modify its order Unpublished Opinion No. 2018-UP-305 submitted May 1, 2018 - Filed July 5, 2018 AFFIRMED. In support of the motion the appellant shows the following to the court:

Jerome A. Owens Sr. Appellant  
Allendale C.I.  
Barnwell B-55  
P.O. Box 1151  
Fairfax, S.C. 29827  
OTHER COUNSEL OF RECORD  
Annie Rumler  
South Carolina Dept. of Corr.  
4444 Broad River Rd.  
Columbia, S.C. 29221

1. This Court overlooked a material fact in the record. 2. This Court overlooked a decision which is controlling authority. 3. This Court misapplied controlling authority.

a. This Court erred in overlooking the holding in the appellate Court precedents before it. Respondent's application in *Henning v. Kaye* 307 S.C. 436, 415 S.E.2d 794 ( ) should not have been persuasive so as to dismiss the Appellant's appeal due to (proof of service) not being served on the Respondent's. The material facts of the record clearly shows that the PRO SE Appellant did comply with the filing procedures in the administrative law court. Had the Appellant failed to comply with the rules of procedure for the filing of his case, then the Clerk of Court at the administrative law court is 'authorize' not to make an assignment of a administrative law judge to entertain a particular case. See ALC Rule 57 section D. . . . this rule says.

“ Any Notice of Appeal which is incomplete or 'not in compliance' with this Rule or Rule 71 will not be assigned to an administrative law judge until all required information is received.

Appellant only contends that assignment of an administrative law judge to his appeal sufficed by his compliance of the initial procedures for the filing of his appeal to the lower Court. And the Clerk of Court made such an assignment of this case on appeal. The Supreme Court Howell J held,

That failure to comply with appellate court rules with regard to initial brief did not require dismissal, *Henning v. Kaye supra*

Furthermore, the appellant in *Henning* was

required to serve and file initial brief complying with the Court rules.

The appellant here believes that his appeal must survive on the holding in Henning V. Kaye 307 S.C. 436.

b. This Court overlooked the controlling authority in Tant V. South Carolina Department of Corrections 408 S.C. 334, 759 S.E.2d 398 (2014)

The material fact in this appeal still exists and is seen as an underlying issue to be repeated again by a broken grievance process controlled by the Department of Corrections. Prior to this Appeal the 'whole of the record' shows within the 'Record on Appeal' that the DOC Inmate Records division changed the structure of the Appellant's sentence without any notice to him of any kind. Several grievances have been filed due to this change in the Appellant's sentence.

Under our state and federal due process clauses, no person shall be denied or deprived life, liberty, or property without due process of law U.S. Const. Amend ~~XIV~~, § 1; S.C. Const. art. 1, § 3. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. State V. Binarr, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012).

The overlooked underlying appeal issue that is before this Court is one concerning a Constitutional claim. Such a claim can only be determined by judicial review. Tant Supra.

The Department of Corrections changed the nature of the Appellant's sentence by lengthening it by almost an additional two years. Clearly a sentence not passed by the Judicial Authority in 2004. As stated in the lower Court. . . . the Appellant was not sentenced to a 'Mandatory 25' year sentence. The

sentence passed was 28 years at 85% as the whole of the record shows. January 2004 Appellant was informed that December 23, 2026 he would be released from custody.

July 2014 after being transferred to a Level 2 prison from a Level 3 prison the Appellant was then told he will be held in custody until March 2028, which is a calculation different than previously found by the DOC.

No Judicial Authority authorized a 25 year Mandatory sentence. And without any kind of notice the DOC passed an entirely new sentence.

An error of the controlling authority in this matter has occurred. In light of the circumstances in their entirety this Court should desire an inquiry into whether the Appellant interest involved could be defined as a liberty or property interest within the meaning of the Due process clause, and if so, what process is due under these circumstances. Bd. of Regents of State Colls. v. Roth 408 U.S. 564, 571-73, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) Tant v. South Carolina Department of Corrections 408 S.C. 334, 759 S.E.2d 398.

A 'strictly' seen pattern by the DOC is to disregard the Supreme Court decision found in Tant and the Courts suggestion in Footnote ② found in the opinion of Tant.

The question is why would judicial review be disregarded and the grievance process would lead us back to judicial review clearly warranted in the overlooked underlying issue on appeal? Judicial economy is then lightly valued.

C. The Court has misapplied the controlling authority in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate

capacity. *Id.* at 377, 527 S.E.2d at 754. Recently the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). Affirming as modified, the ALC's en banc decision of *McNeil v. S.C. Dep't of Corr.* 02-ALJ-04-00336-AP (Sept, 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously et al. calculated his sentence, sentence related credits, or custody status; (2) cases in which SCOC has taken an inmate's state created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state created liberty interest. See *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding category one the South Carolina Supreme Court has completely laid the Foundation as to the Constitutional required procedure that Due Process requires. See *Tant v. South Carolina Dept of Corr.* 408 S.C. 334, 759 S.E.2d 398 (2014)

The material facts of the record of this case as a whole is identical to *Tant* with one major exception. . . . Judicial Authority did not notify the Department of Corrections to ORDER a 25 year MANDATORY day for day sentence. Whereas the 28 year sentence at 85% would project an earlier release from custody by 2026 instead of 2028

See *Tant* at 408 S.C. 341 The Supreme Court of South Carolina in its holding. . . . There can be no doubt the length of an inmates incarceration implicates a constitutional liberty interest. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 18, 99 S.Ct. 2100, 60 LEd.2d 668 (1979)

Due Process required by the Supreme Court in the Tant decision has continued to be disregarded by the Department of Corrections as the Record on Appeal by the Appellant clearly reveals. NO ONE from this Department provided NOTICE to the Appellant June 24, 2014 prior to changing his sentence to what it is NOW.

Appellant quotes Tant's conclusion by the Supreme Court . . . . . Based on the foregoing we hold that the Department must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing

NOTE:

June 24, 2014 Appellant was transferred to a level 2 facility. Two weeks thereafter he was notified about his sentence being changed. S.C.D.C. grievance policy and procedure was not extended to the Appellant at that time. And his grievances were denied as untimely per S.C.D.C. policy.

2. The decision should have been rendered is for the Appellant Jerome A. Owens Sr. in REVIEW of the overlooked underlying issue on Appeal for Judicial Review of his sentence.

WHEREFORE, the appellant respectfully requests the Court to reconsider its July 5, 2018 opinion and provide appellant with Judicial Review of his SENTENCE.  
July 17 2018

Jerome A. Owens Sr.  
Jerome A. Owens Sr.  
Allendale C.I. / Barnwell B-55  
P.O. Box 1151  
Fairfax, S.C. 29827

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
H.W. Funderburk Jr., Administrative Law Judge

CASE NO 2017-000694

Jerome A. Owens Sr.

APPELLANT,

v.

South Carolina Department of Corrections

Respondent,

CERTIFICATE OF SERVICE

Undersigned appellant hereby certifies that on today's date I mailed a copy of the Motion For Rehearing of Appellant on Appeal to Respondent, S.C. Dept of Corr., to attorney of record addressed as follows: Annie Rumler Office of General Counsel, 4444 Broad River Rd.

Columbia, S.C. 29221

July 17 2018

Jerome A. Owens Sr.

Jerome A. Owens Sr.

Allendale C.I.

Barnwell B-55

P.O. Box 1151

Fairfax, S.C. 29827

Original Copy

Jenny Abbott Kitchings

Clerk

Court of Appeals

P.O. Box 11629

Columbia, S.C. 29211

**RECEIVED**

JUL 19 2018

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
H. W. Funderburk Jr. Administrative Law Judge  
Case No. 2017-000694

Jerome A. Owens Sr. . . . . Appellant,  
v.  
South Carolina Department of Corrections . . . Respondent,

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on the South Carolina Department of Corrections by depositing a copy of it in the United States Mail postage prepaid on July 17, 2018 addressed to their attorney of record Annie Rumler, 4444 Broad River Road Columbia, S.C. 29221

s/ Jerome A. Owens Sr.  
Jerome A. Owens Sr.  
Allendale C. I.  
Barnwell B-55  
P. O. Box 1151  
Fairfax, S.C. 29827

**RECEIVED**

JUL 19 2018

SC Court of Appeals

July 17, 2018  
**RECEIVED**

JUL 19 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, S.C. 29211

RE: Jerome A. Owens Sr. V. S.C. Department of Corrections  
Case No. 2017-000694

Dear Mrs. Abbott Kitchings

I am enclosing . . . . . the original and one copy of petition for a rehearing of my appeal in the above case for filing, requesting review of the underlying issue by the Court of Appeals in this case. I am also enclosing the following:

1. Proof of service of the Petition for Rehearing on the Respondents.
2. A copy of the order which is to be reheard by this Court of Appeals.
3. This Appeal is a Motion for a Rehearing and should not require a filing fee.
4. This Motion is being filed for Rehearing due to the overlooked underlying issue on Appeal pursuant to Rule 221 SCACR

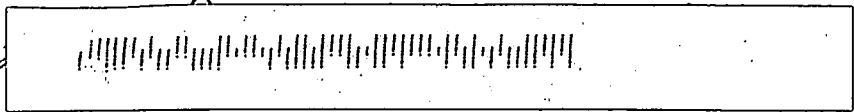
Please file the enclosed and return file-stamped copies to me . . . . Thank You Very Much.

With best wishes, I remain

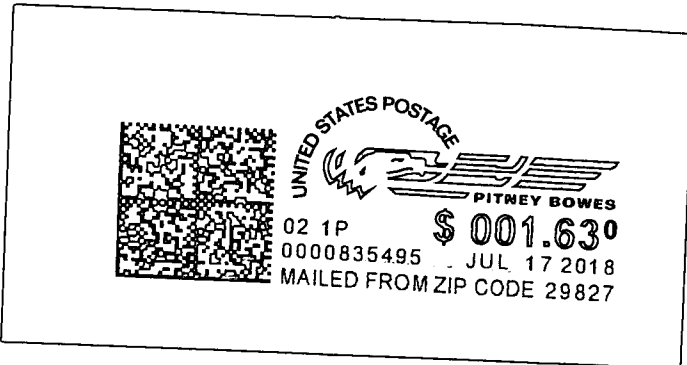
Very truly yours  
Jerome A. Owens Sr.

Jerome A. Owens Sr.  
Allendale C.I.  
Barnwell B-55  
P. O. Box 1151  
Fairfax, S.C. 29827

Jerome



Allendale e. D.  
Barnwell B-55  
P.O. Box 1151  
Fairfax, S.C.  
29827



RECEIVED  
JUL 19 2018  
SC Court of Appeals

RECEIVED  
JUL 17 2018  
MAILROOM  
ACI

Att: Hon Jenny Abbott Kitchings  
Clerk  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C.  
29211