

RECEIVED

SEP 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Opinion No. 2018-UP-305

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

PETITION FOR A WRIT OF CERTIORARI

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

Other Counsel of Record:
Annie Rumler
S.C. Dept. Of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, S.C. 29221

INDEX

| | |
|----------------------------------|-----|
| Certificate of Counsel | 2 |
| Questions Presented | 3 |
| Statement of the Case | 4-5 |
| Arguements | 6-8 |
| Conclusion | 9 |

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 17 2018

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

S.C. SUPREME COURT

Opinion No 2018-UP-305

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

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals August 16, 2018

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

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN AFFIRMING THE ADMINISTRATIVE LAW COURT'S DECISION OF DENIAL OF REVIEW OF APPELLANT'S APPEAL AND UNDERLYING CLAIM OF DUE PROCESS OF JUDICIAL REVIEW UNDER TANT V. S.C.D.C.(2014)?

DID THE COURT OF APPEALS ERR IN ITS DECISION NOT TO EXERCISE JUDICIAL ECONOMY IN THE APPELLANT'S APPEAL?

STATEMENT OF THE CASE

This matter came by way of appeal from a decision that the Department of Corrections made concerning the structure and calculation of appellant's sentence.

February 19, 2004 Circuit Judge Reginald T. Lloyd sentenced the appellant to 28 years at 85% for trafficking crack. This sentence became final May 25, 2006. Upon entering SDC the appellant was notified yearly his release date was ~~Jan~~ December 23, 2026. After simulating custody levels to a lower security custody 10½ years later. An SDC employee one Stephanie Willis of Inmate Records changed the structure of the Court's sentence to 25 years mandatory day for day. Thus changing his release date to March 28, 2028.

Without any notice to the appellant this action has continued to be in effect by SDC and several grievances have been filed. This latest grievance from step 1 was filed June 23, 2016 challenging the change of his sentence and the manner in which it was done. Thereafter step 2 was filed July 22, 2016. August 30, 2016 this was denied and appeal was timely taken to the Administrative Law Court. On March 8, 2017 Administrative Law Judge H. W. Funderburk dismissed appellant's appeal for failing to file and provide a proof of service along with his notice to appeal to the attorney general's office.

Appeal of this decision was timely taken October 13, 2016 In The Court of Appeals on the merits of the two issues presented to this Court. The decision of the administrative law court was affirmed and one underlying claim was not decided in this Court's order dated July 5, 2018.

a petition for rehearing was timely taken in The Court of Appeals requesting that this Court exercise judicial economy and hear the underlying claim of due process and judicial review for an inmate. On August 16, 2018 rehearing was denied by the Court of Appeals.

Now the appellant seeks writ of certiorari before this honorable court to review the Court of Appeals decision in this matter.

ARGUMENT

ISSUE 1.

THE COURT OF APPEALS SHOULD HAVE ENTERTAINED THE APPELLANT'S UNDERLYING CLAIM FOR DUE PROCESS OF JUDICIAL REVIEW UNDER TANT V. S.C.D.C. (2014)

The facts of this appeal are not complex and the issue presented in the appellant's brief deserved judicial review of the merits for two brief reasons.

The decision of the administrative court in its order was an error by which Rule 59 of South Carolina Administrative Law Court Rule provides the following instruction. Rule 59 section D 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.

The record of the appellant's appeal and the brief before the Court of Appeals contain a matter where the clerk of the administrative law court will decide if an inmate's appeal is proper prior to assignment of a judge to an inmate's appeal.

Here, in this appeal, the administrative law judge and the Court of Appeals holding is misplaced under Henning V. Kaye 307 S.C. 436, 415 S.E. 2d 794 (1992). The holding of the case law while on appeal require compliance by the appellant with the Court's instruction of such concerning the rules of procedure.

The appellant did comply with the rule however, Rule 59 SCALC does direct that a given case should not, that is 'will not' be assigned a judge until

all the required information is received. See Rule 59 SCALC rule. The appellant simply believes that the interpretation of the holding in the case law is overbroad. And had the Clerk of Court found the notice of appeal incomplete, then H.W. Funderburk would not have received an incomplete appeal. The proof of service not being served on the attorney for SCDC seems to be a very strict holding for dismissal of an appeal. Certainly, the Clerk of Court was served because the appeal was assigned a judge. The Court of Appeals should have reviewed this appeal or remanded this appeal for compliance of the rules see Henning V. Kaye Supra.

Now . . . seeing that such a decision is contrary to the precedent holding of the case law. The issue contained in the underlying initially overlooked and again denied to be reviewed by the Court of Appeals in the appellant's rehearing petition. The appellant asserted that he had been denied Due Process prior to the changing of his sentence pursuant to Tant V. South Carolina Department of Corrections 408 S.C. 334, 759 S.E. 2d 398 (2014).

This Court specifically directed the DOC in providing an inmate the constitutional right of due process and it's required function that must be provided to an inmate. Calculation of an inmate's required release date must be exercised by the DOC. However, this department is not authorized to change the structure of an inmate's sentence from 85% to mandatory day for day. The statute does not read mandatory day for day in this appeal. Also the sentence as recorded by the Court and the relevant sentencing sheets does not require 25 years mandatory. The problem is that one Stephanie Willis at Inmate Records went into the appellant sentence without any notice to him or any order from the

sentencing judge and changed the appellant's sentence to 25 years mandatory. To sum this account up, such was done 10 1/2 years after the appellant had began the execution of his sentence.

The whole record on appeal shows that the DOC went so far as to deny the appellant access to the Courts on three occasions. Even as post TANT had been decided months prior to the DOC's change of appellant's sentence. TANT V. S.C.D.C continues to be disregarded by this department. Furthermore this Court in it's holding, laid out the guidelines to fulfill due process to this department, so as to provide inmates with judicial review.

The Court of Appeals err in it's decision not to exercise judicial economy in the appellant's appeal.

Given the clear evidence in this case and the appellant's petition for a rehearing and the whole of the record before this Court. . . the intrrests of judicial economy would best be served if this Court addresses the merits of the issue overlooked. Cf Mose V. State 420 S.C. 500, 803 S.E.2d 718 (2017)

The appellant was deprived of due process the moment his sentence was changed in June 2014 without notice. Judicial review of his sentence is warranted in the underlying claim found in the Court of Appeals order denying the appellant review of such. See Unpublished Opinion No. 2018-UP-305, Footnote(2). The Court noting that nothing prevents the appellant from filing another grievance challenging the department's calculation of his sentence.

CONCLUSION

The Court should grant certiorari and review the appellant's petition for a rehearing and provide the appellant with judicial review of his sentence under the authority of *Tant v. S.C.D.C.* 408 S.C. 334, 759 S.E.2d 398 (2014).

s/ Jerome A. Owens Sr.

Jerome A. Owens Sr.

Allendale C.I.

Barnwell B-55

P.O. Box 1151

Fairfax, S.C. 29021

The South Carolina Court of Appeals

Jerome Owens, Appellant,

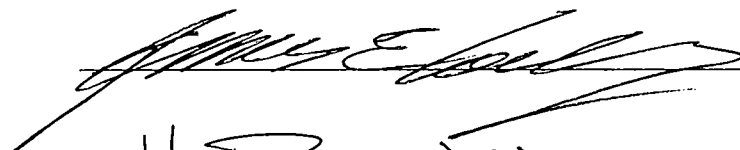

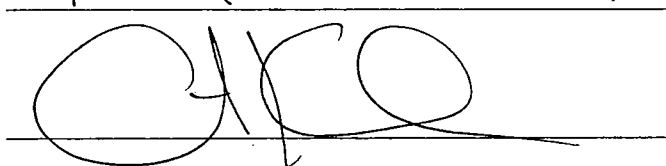
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-000694

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Jerome Owens #299108

Annie Laurie Rumler, Esquire

FILED

Aug. 16, 2018

RECEIVED

SEP 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Opinion No. 2018-up-305

Jerome A. Owens Sr. Appellant,
v.

South Carolina Department of Corrections Respondent,

PROOF OF SERVICE

Undersigned appellant hereby certifies that on today's date, I mailed an Original Petition Writ of Certorari to the Clerk of Court addressed as follows: Daniel E. Shearouse P.O. Box 11330, Columbia S.C. 29211
Supreme Court of South Carolina

September 10, 2018

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