

The State of South Carolina
in the Court of Appeals

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DEC 19 2018

SC Court of Appeals

Appeal From the Administrative Law Court
Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 17-ALJ-04-0163-AP

South Carolina Department of Corrections, Respondent

v.

John K. Massey, Sr.

Appellant

Motion to Proceed In Forma Pauperis

Appellant (Mr. Massey), would respectfully ask this Court to allow his Notice of Appeal to be filed In Forma Pauperis.

History

On December 6th, 2018, Administrative Law Judge S. Phillip Lenski ordered that appellant's case be dismissed because he considered one of appellant's issues moot; omitting the fact, appellant raised two separate issues in his Brief.

In Appellant's Brief he stated that he was not given his full jail time credit, and that his jail time credits were not properly applied to both his consecutive sentences once his time was amended as prescribed by his sentence sheets. Respondents and the Judge's Order concede Appellant was given credit for time served on both his sentence sheets. They also concede Appellant's sentence was incorrect and the sentencing Judge did not award Appellant all his jail time credit.

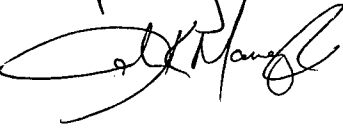
Argument

In an attempt to correct this issue the Department of Corrections (S.C.D.C.) amended Appellant's sentence, even though, S.C.D.C. does not have this authority: exercise of sentencing authority by S.C.D.C. would violate the separation of powers doctrine, State v. Archie, 470 S.E.2d. 380 (Cl. App. 1996). S.C.D.C. should have remanded Appellant's case back to the Circuit Courts for a re-sentencing hearing once the error was discovered. Furthermore they compounded the error in an attempt to correct it. They failed to uphold the contractual agreement of Appellant's sentencing sheets, hence the reason Appellant raised the second separate issue.

Respondents argue that Appellant should be given his new amended jail time applied once and only to the leading sentence. Appellant asks - if this is the case - which sentence is the leading sentence, since either sentence has the same sentence start date. Because if you apply the new updated time to either of the sentences you get two separate sentence completion dates. Thus creating a constitutionally challengeable liberty interest for Appellant. Which is entitled to review by the (ALJD) and then by the judicial branch.

Furthermore, the contractual agreement of the sentencing sheets must be upheld.

Wherefore, Appellant is praying for this Court to accept this matter and allow Appellant's Notice of Appeal to be filed In Forma Pauperis. Appellant is indigent and has a fundamental and constitutional right to have access to the Courts when his liberty interest are at stake.

Respectfully Submitted


S/ John K. Massey, Jr # 305341
Maddougall Correctional Inst.
1516 Old G.illard Rd.
Ridgeville, South Carolina 29472

December 19th, 2018

Ridgeville, South Carolina

The State of South Carolina
in the Court of Appeals

Appeal From the Administrative Law Court

Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 17-ALJ-04-0163-AP

South Carolina Department of Corrections,
Respondent

vs.

John K. Massey, Jr.
Appellant.

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Appellant.

Proof of Service

I, John K. Massey, Jr., certify that I have served the within, a Notice of Appeal, Proof of Service, Copy of the Administrative Law Court Judge's Order, and a Motion to File in forma pauperis by placing copies of each via United States mail to the following individuals last known address:

(1) Honorable S. Phillip Lenski:


South Carolina Administrative Law Court
Edgar A Brown Bldg. Ste 224
1205 Pendleton Street
Columbia, South Carolina 29201

(2) Office of General Counsel

P.O. Box 21787
4444 Broad River Rd
Columbia, South Carolina 29221

(3) Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 18th day of December, 2018.

Respectfully Submitted


s/ John K. Massey, Jr. # 305341
MacDougal Correctional Inst.
1516 Old Gillard Road
Ridgeville, South Carolina 29472

December 18th, 2018

John K. Massey, Jr. # 305341
Macedougall Correctional Inst
C1B/18A
1516 Old Billiard Road
Ridgeville, South Carolina 29472

Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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Re: S.C.D.C., Respondent v. John K. Massey, Jr. Appellant
Case No.: 17-ALJ-04-0163-AP

Dear Ms. Kitchings:

Enclosed for the filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on Respondents.
- (2) Copy of the Order which is to be challenged on appeal.
- (3) Motion to proceed In Forma Pauperis *
- (4) This appeal is being filed with the Court of Appeals because the Administrative Law Court failed to address both Appellant's issues stated in Appellant's Brief. (see Rule 203(d) for when an appeal can be filed with the Court of Appeals.)

12/18/2018

other Counsel of Record:
Office of General Counsel
P.O. Box 21787
Columbia, S.C. 29221-1787

s/ John K. Massey, Jr. # 305341
Macedougall Correctional Inst.
1516 Old Billiard Rd.
Ridgeville, S.C. 29472
Pro-Se Appellant Attorney

* Under Rule 203(d)(1)(B)(iii) and (d)(2)(B)(iii), SCACR, a Filing Fee is not required if appeal is from a criminal case, taken by the State, its departments or agencies, or PCR's Rule 240(d), SCACR

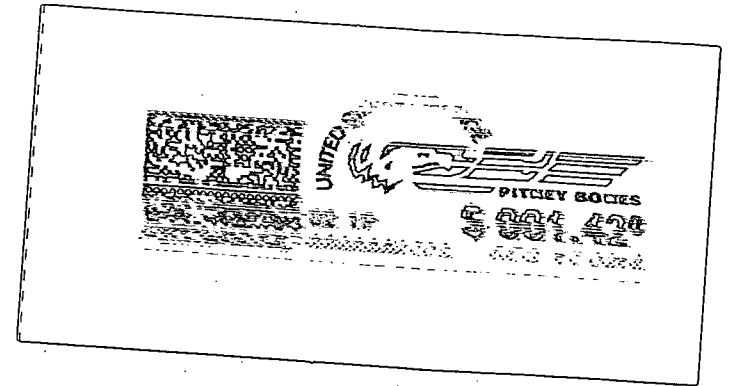
John K. Massey, Jr. # 305341

Macdougal Correctional Inst.

CIB-18A

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Ridgeville, South Carolina 29472



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SC Court of Appeals

Jenny A. Kitchings

Clerk, South Carolina Court of Appeals

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