State of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2018-002243

John K. Massey, Jr. #305341, Appellant

v.

South Carolina Department of Corrections, Respondent

Initial Brief of Appellant

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SC Court of Appeals

John K. Massey, Jr.

Pro-Se Appellant

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Statement of the Case

Appellate John K. Massey, Jr. # 305341 filed an appeal before the Administrative Law Court (ALC) against South Carolina Department of Corrections (S.C.D.C.), he argued two issues : (1) He was not given his full time jail Credit ; and (2) His jail time credit was not properly applied to both his consecutive sentences pursuant his sentence sheets.

On December 6th, 2018 the (ALC) Ordered that Appellant's case be dismissed. The Court considered the case moot since (S.C.D.C.) corrected Appellant's jail time credit from 140 days to 582 days and updated Appellant's sentence on December 27th, 2017. However, the court failed to address Appellant's second issue that once Appellant was given his corrected/updated jail time Credit - the updated time - was not properly applied. Because of the (ALC) Order, Appellant filed a timely Notice of appeal with the Court of Appeals. This brief follows.

Argument

I. The South Carolina Department of Corrections erred in failing to properly apply Appellant's jail time credit to both his consecutive sentences pursuant the contractual agreement of his sentence sheets and the judges sentencing intent.

Relevant facts

Appellant was found guilty by jury trial. He was sentenced to ten years for grand larceny and two years for malicious injury to property. The trial judge ordered the sentences to be served consecutively. During the sentencing proceedings, the solicitor argued Appellant was entitled to only 140 days of pre-trial detention time. Appellant objected and informed the court he had served approximately two years detention time. However, the judge agreed with the solicitor's line of reasoning and recommendation; he then pronounced Appellant's sentence. Appellant was to serve on the grand larceny 10 yrs; the malicious injury to property 2yrs consecutive and get credit for 140 days on "these" two sentences which are consecutive. Appellant was giving 140 days credit on both his sentence sheets. (Exhibit A).

Because Appellant timely objected to the judge's sentence, the issue concerning the pre-trial detention time was preserved for Appellate review: State v. John K. Massey Jr., Case No. 2015-002563. The Court of Appeals heard oral argument on April 12th, 2018, this will be discussed in greater detail below.

Moreover, Appellant filed an appeal with the Administrative Law Court (ALC) raising two issues: (1) he was not given all his pre-trial detention time; and (2) The South Carolina Department of Corrections (S.C.D.C.) did not properly apply his jail time credits to both his consecutive sentences per his sentence sheets. (Exhibit C pg. 3-4).

On December 29th, 2017, (S.C.D.C.) conceded to Appellant's argument, the trial judge did err, and he did not give Appellant all his pre-trial jail time. (S.C.D.C.) found Appellant had not served 140 days, but had actually served 582 days. Then: (S.C.D.C.) updated Appellant's sentence, but did not give the additional time to his second consecutive sentence. (Exhibit D).

On December 6th, 2018 the (ALC) issued an Order of Dismissal, stating Appellant's appeal was moot because the Department had already given Appellant credit for 582 days. (Exhibit E). Moreover, in the Court of Appeals, the State argued the same; the State argued the issue was moot because (S.C.D.C.) had already given Appellant credit.

Subsequently, the State, (S.C.D.C.) and Appellant agree to one part of Appellant's argument - the judge erred and Appellant was entitled to 582 days of credit. However, Appellant's second issue remained in place: (S.C.D.C.) did not correctly apply Appellant's jail time credit per his sentence sheets, even though, it was the judges sentencing intent to grant Appellant equal jail time credit to both his consecutive sentences. (Exhibit A, Exhibit C pg. 3).

Nevertheless, the (ALC) did not review Appellant's second issue and dismissed his appeal.

Discussion

Pursuant to Tant v. S.C.D.C., 408 S.C. 334, 759 S.E. 2d. 398 (2014), the Court ruled the Department of Corrections is held to the face of the sentence sheet absent ambiguity. Moreover, when a sentencing sheet is signed by all parties - the Judge, Solicitor, and the Defendant without objection - it Memorializes the sentencing intentions no less that what is pronounced from the bench.

Thus, in theory, a sentencing sheet is a Contract agreement - which is binding.

Futhermore, as recognized by this Court, interpreting S.C. Code Ann. § 24-13-40, it's Mandatory a judge cannot deny a defendant credit for time served, and Similarly held by this Court, (S.C.D.C.) cannot deny a defendant Credit for time served giving by a sentencing judge per the Defendant's Sentencing Sheets. Therefore when Appellant filed his appeal with the (ALC), by law, he was entitled relief on both issues: the judge erred as a Matter of law denying Appellant all his pre-detention time, and (S.C.D.C.) erred by Not properly applying all Appellant's jail time Credits to both his Sentences.

During Appellant's Sentencing hearing, the judge pronounced Appellant get equal jail time credit to both Sentences, 140 days. (S.C.D.C.) and Appellant agree that the judge gave credit for time served on both sentence sheets; they both agree the judge erred and did not give Appellant his correct jail time Credit. (Exhibit E). In Fact, both agree Appellant was entitled to 582 days credit. This corrected time should have been applied

to both Appellant's Sentences.

Like Tant, supra, Appellant asks, "What process must (S.C.D.C.) engage in to determine an inmates sentence as intended by the sentencing judge."

In Respondent's Brief (Exhibit C), they argue Appellant should only have been giving his amended jail time applied once and only to the leading sentence. If this is the case, which sentence is the leading sentence? Either sentence could have the same start date. And, if you applied the new updated time to either sentence, you get two seperate sentence completion dates. The Department's policy on this issue is ambigous, especially when trying to apply it to Appellant's case. (Exhibit B section 12).

In Tant, the judge was silent as to which sentence was to be served consecutive. In Appellant's case, the Department's policy is silent as to which sentence would be the leading sentence when both are given equal credit, and which sentence should have been given the amended time. According to the sentence sheets, the judge intended Appellant get time on both.

Thus (S.C.D.C.) created a constitutionally challengable liberty intrest. This happens anytime the length of an inmate's incarceration comes into question. Moreover, they compounded their error by failing to review Appellant's second issue concerning the amended time, and failing to uphold the contractual agreement of Appellant's sentence sheets.

Because if you follow (S.C.D.C.'s) reasoning and apply the updated time to

the grand larceny, but not the malicious injury to property, Appellant's sentence ends in August of 2020. But if you apply Appellant's updated time to his malicious injury to property sentence, but not his grand larceny sentence, Appellant's sentence would end August of 2019, plus Appellant would be eligible for a Mandatory furlough.

This has a significant effect against Appellant's constitutional liberties. In effect, (S.C.D.C.) would be changing Appellant's sentence. The authority to change a sentence rests solely in the hands of a sentencing judge within the exercise of his discretion. State v. Hicks, 659 S.E. 2d. 499, 500 (Ct.App. 2008). (S.C.D.C.) does not have this authority; exercise of sentencing authority by (S.C.D.C.) would violate the seperation of powers doctrine. State v. Archie, 470 S.E. 2d. 380 (Ct.App 1996).

The seminal case dealing with this issue is Tant v. S.C.D.C., supra. In Tant, the Court ruled (S.C.D.C.) is held to the face of the sentence sheet absent ambiguity, and although intent of the judge is controlling in determing whether sentences run concurrent or consecutive, ambiguity or doubt relative to a sentence should be resolved in favor of the accused." Id. The (ALC) erred as a matter of law in dismissing Appellant's appeal as moot, and by not properly applying Appellant's corrected jail credits to both his sentence sheets. In total, Appellant is entitled to 582 days credit applied correctly to his sentence. As a matter of law, once the error was found that Appellant was not given all his jail time, and his sentence needed correcting, the Department should have construed.

Appellant's sentence in his favor, in accord with the controlling law in Tant, supra.

Conclusion

Concerning Appellant's issue, Appellant respectfully requests this Court correct his sentence to reflect the judges sentencing intent that both sentences recieve the same intended jail credit of 582 days; Or correct Appellant's sentence in accordance with the mandatory provisions of controlling case law — construe Appellant's sentence in his favor.

This day of February 14th, 2019

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Attorney

State of South Carolina

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John K. Massey, Jr. #305341, Appellant,

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South Carolina Department of Corrections, Respondent.

Proof of Service

I, John K. Massey, Jr. #305341, certify that I have served the within an Initial Brief and Designation of Matter upon the following individual(s) by placing copies of the same via United States mail to his/her last known address as follows:

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I Certify that all parties required by Rule to be served have been served. this day of February 14th, 2019.

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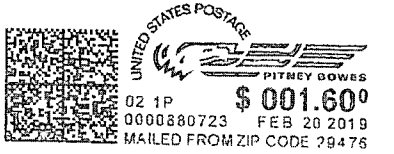

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