

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge, John D. McLead

CASE NO. 13-ALJ-04-0665-AP

S.C. Dept. of Corrections Respondent,

v.

Stefen E. Harris, #208563 Appellant.

RECORD ON APPEAL

Stefen E. Harris #208563
Ker. C.I. 1PB-33
4848 Goldmine Hwy
Kershaw, S.C. 29067
Pro Se, Appellant

RECEIVED

APR 28 2014

SC Court of Appeals

Shanika K. Johnson
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221
Attorney for Respondent

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 23, 2014

Stef E. Harris
Stefen E. Harris #208563
Ker. C.I. / PB-33
4848 Goldmine Hwy
Kershaw, S.C. 29067

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

RECEIVED JAN 16 2013

INMATE NAME: STEPHEN E. HANUS
SCDC NUMBER: 208563
INSTITUTION: HERSAM
HOUSING UNIT: RB 32
WORK ASSIGNMENT: KITCHEN

JAN 17 2013
KITCHEN
GRIEVANCE

Office Use Only
Grievance No. KACE 0018-13
Code: General
Policy
Disc. Hear.
Class.
Date Received 1/17/13
IGC Initials JPH

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I spoke with my caseworker MS CAMPBELL ON JANUARY 9, 2013 ABOUT MY MAX OUT DATE BEING CHANGED FROM 4/10/2013 TO NOVEMBER 2020. MY FAMILY CALLED SCDC TO SEE IF IT WAS CORRECTED. MY FAMILY SAYS MY MAX OUT DATE AS OF 1/8/2013 REMAINS NOV 2020.

ACTION REQUESTED:

THAT MY MAX OUT DATE BE CORRECTED TO REFLECT MY ORIGINAL RELEASE DATE OF 4/10/2013

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I FILED GRIEVANCE 0011-13 AND 0040-13 AND IGC STILL WANTS MORE GRIEVANCES FILED ABOUT THIS MATTER. MY CASEWORKER TOLD ME ON 1/9/2013 TO FILE GRIEVANCES

ACTION TAKEN BY IGC:

SHE CAN NOT CORRECT

Stephen E. Hanus 1/15/13
Grievant Signature Date

IGC conferred with Case Manager Mrs. York. See Warden's Response

[Signature] 1/25/13
IGC Signature Date

N/A
Grievant Signature Date

I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.

WARDEN'S DECISION AND REASON:
Inmate Harris;

This is in response to KRCI-0078-13. All pertinent information and documentation has been reviewed. Your projected release date has been reviewed and no errors were found. Documentation has been provided indicating you were convicted of Trafficking in Crack and received a thirty year sentence. Your sentence start date was 11-1-95. The statute code on this offense is a mandatory sentence to serve day for day. Your sentence was recalculated on 6/3/10. Your maxout date of 11/1/20 is correct and your time has been calculated correctly.

Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

- I accept the Warden's decision and consider the matter closed.
 I do not accept the Warden's decision and wish to appeal.

Stephen Harris FEB 7, 13
Grievant Signature Date

Cecilia Gallo 2-1-13
Warden Signature Date
D. Hough 2/6/13
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

CMTIS30D

DC OFFENDER MANAGEMENT SYSTEM

426

03/11/98

RELEASE DATE: SCREEN

SMITHKIM

SCDC ID: 00208563

LOC: KERSHAW

HARRIS, STEFEN E.

OFFENDER CATEGORY: VIOLENT

CURR SENT SERVING CAT: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

TOTAL SENTENCE...: 030-00-000

CONSECUTIVE SENTENCE ...: N

CURRENT SENTENCE: 030-00-000

CURRENT SENT START DATE: 11/01/1995

PROJECTED COMPLETION DATES

MAXOUT DATE: 04/10/2013

CURRENT EWC ..: 7 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 0/ 0/ 0 0

NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

TOTAL GT DAYS EARNED: 000300

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000046

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000000

PROGRAM CUSTODY DISQUALIFIER

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000850

PFKEYS: 5: HISTORY OF DATE CHANGES

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM**

STEP 2

INMATE NAME: STEFEN E. HARRIS
 SCDC NUMBER: 208563
 INSTITUTION: Kershaw
 HOUSING UNIT: PB33
 WORK ASSIGNMENT: KITCHEN

DUE
2/11/13

FEB 08 2013

FEB 14 2013

INMATE GRIEVANCE

Office Use Only
 Grievance No. 10018-0018-13
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class.
 Date Received 2/14/13
 IGC Initials PH

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

MY OFFENSE DATE IS 11/1/1995. AT THE TIME OF MY OFFENSE THE LAW IN EFFECT WAS THE SERVICE OF 51% OF A SENTENCE IMPOSED BY THE COURTS BY GOOD-TIME AND WORK CREDITS I AM NOT SERVING A DAY FOR DAY SENTENCE PURSUANT TO LAW. SCDC CALCULATION IS INCORRECT

Stefen Harris FEB 7, 13
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your appeal has been reviewed. Your conviction does require a mandatory minimum term of 25 years pursuant to the statute as it was written at the time of your offense. As a result, you must serve 25 years day-for-day.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

J. Gaston 7-31-13
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Stefen Harris 8.13.13
 Grievant Signature Date

P. North 8/13/13
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Stefen Harris, # 208563
Appellant,

)
) Docket No. 13-ALJ-04-0665-AP
)

v.

) APPELLANT'S BRIEF
)

S.C. Dept. of Corrections
Respondent.

) Honorable John D. McLeod
)
)

STATEMENT OF THE CASE

Now comes the Appellant with this matter before the Administrative Law Court ("ALC") pursuant to the appeal of "the statute as it was written at the time of... offense" ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("S.C.D.C.").

Appellant filed Step One Grievance on January 15, 2013. This grievance was investigated and denied February 7, 2013. Then appellant filed a Step Two Grievance on February 7, 2013. This grievance was investigated and denied August 13, 2013.

The Appellant now appeals claiming that his conviction does not require a mandatory minimum term. For the reasons that follow, Appellant respectfully requests that his sentence be corrected to reflect the sentence that was imposed by the court.

STATEMENT OF THE ISSUES OF APPEAL

PLEASE TAKE NOTICE that, the Appellant herein hereby APPEALS the Agency's Final response. This matter comes before this court by way of the Final decisions of the Department of corrections.

It has become a fact that the South Carolina Department of Corrections has RESENTENCED, the Appellant to a mandatory minimum term sentence on June 3, 2010. When S.C.D.C. discovered the alleged oversight and then RE-CALCULATED Appellant's sentence based on "the statute as it was written at the time of your offense."

S.C.D.C.'s unilateral modification of Appellant's sentence was/is invalid as a matter of Law. A additional penalty was added by changing Appellant's max-out date from August 1, 2012 to November 1, 2020. Which was never a provision that was apart of the sentence imposed by the Court.

Thus constituting an EX POST FACTO violation under S.C. Constitution Article I §4, which Flatly prohibits retroactive application of penal legislation.

The Department of Corrections has no power to Alter a sentence imposed by the Court, unless made by a Judge, Any additions to Appellant's sentence that was not imposed by the Judge is UnLawful.

There was never an expression in the sentence or the sentencing phase that implied, that Appellant's sentence is a mandatory minimum term, upon which S.C.D.C. relies.

Appellant was sentenced to a term of 30 years, therefore anything other than the 30 years of incarceration - as it also relates, to the calculation of good time and work credits - imposed on him by the Judge at his sentencing hearing and record in his order of commitment. The additional provision (time) added by the South Carolina Department of Corrections is a nullity.

The Penalty administratively added by the Department of Corrections, is contrary to clearly established Law.

This modification to Appellant's sentence violated his Due Process Rights and runs a foul of the EX POST FACTO CL[AU]SE. Protection against a post offense change that creates a significant risk of increased punishment.

ARGUMENT 1

Modification to APPELLANT'S sentence Violated Due Process Rights.

The United States Supreme Court has established that the sentence imposed by the sentencing Judge is controlling; it is the sentence that constitutes the Court's judgement and authorizes the custody of a defendant. Hill v. United States, ex rel Wampler, 298 U.S. 460, 56 S.Ct 760, 80 L.Ed 1238 (1936)

The judgement of the Court establishes a defendant's sentence and that sentence may not be increased by an administrator's amendment. The only cognizable sentence is the one imposed by the Judge. Any Alteration to that sentence, unless made by a Judge in a subsequent proceeding, is of no effect.

An erroneous order of commitment prepared by the Clerk of Court with the Court's knowledge cannot alter the sentence imposed by the Court, then plainly a later addition to the sentence by an employee of the executive branch cannot do it either.

If the judgement and sentence do not authorize his detention, no mittimus will avail to make detention lawful.

In any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence of the Judge. (SEE EVIDENCE # 1, From transcript pg 298 Line 13, 14)

ARGUMENT 2

Only the judgement of a court, as expressed through the sentence imposed by a Judge, has the power to constrain a persons Liberty.

"The United States Supreme Court thus recognizes the procedural requirements in sentencing demands that a sentence must be imposed by a Judge, on Record, in court. This mandatory provision was not

included in the sentence announced in Court by the Judge...

Holding that the oral sentence constitutes the judgement of the Court and that it is that sentence that provides the authority for the execution of the sentence. Kennedy v. Reid, 248 F.2d 482. And since, there was no mandatory minimum term imposed by the sentencing judge. The Prisoner is detained, not by virtue of the warrant of commitment but on account of the judgement and sentence of the Court.

Imprisonment was authorized not by the sentence as calculated... but by the judgement of the Court. (SEE EVIDENCE #1, From transcript pg. 299 Line 13, 14)

ARGUMENT 3

The only sentence known to the Law is the sentence or judgement entered upon the records of the Court, it says what it was meant to say and this by an irrebuttable presumption.

The judgement authorized the state to incarcerate... No more. [T]he choice of pains and penalties, when choice is committed to the discretion of the Court, is part of the judicial function. This being so, it must have expression in the sentence and the sentence is the judgement. Appellant confirmed that no mandatory minimum term had been mentioned at either his trial or sentencing. (SEE EVIDENCE #1, From transcript pg. 299 Line 13, 14)

Appellant was not informed of this mandatory minimum term provision, at the time, sentence was imposed. Holding that the written judgement of commitment is simply evidence of the oral sentence. United States v. Marquez, 506 F.2d 620, 622.

The sentence spread upon the records is identical with the orally pronounced and that the only variance complained of is between sentence

and commitment.

Two strands of precedent reflecting the Concern with proportionate punishment come together here. The First has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class... and the severity of a penalty. Kennedy v. Louisiana, 128 S. Ct. 2641

CONCLUSION

Appellant respectfully requests to have this sentence calculated correctly, that it may reflect the true intent of the sentence imposed by the Court; to reproduce appellant's originally intended release date. Since, the proper term of his imprisonment has expired and that his detention has become unlawful. Because S. C. D. C. did not have the power to alter the sentence imposed by the Court, and therefore added condition should be voided and appellant should be released immediately; in accordance with the laws set forth herein.

Respectfully submitted

Stefen Harris
Stefen Harris # 208523
Ker. C. I. / PB-33
4848 Goldmine Hwy
Kershaw, S. C. 29067

November 11, 2013

1 THE COURT: ALL RIGHT, SIR. NOW, WHAT WAS THE DATE OF
2 ARREST? HE HAS BEEN IN JAIL CONTINUOUSLY SINCE; IS THAT
3 CORRECT?

4 MR. SALLEY: 11-1

5 THE COURT: 11-1?

6 MR. SALLEY: 11-1-95.

7 THE COURT: AND HE'S BEEN INCARCERATED SINCE THAT TIME;
8 IS THAT RIGHT?

9 MR. SALLEY: YES, SIR.

10 MR. ROGERS: SINCE THAT TIME.

11 THE COURT: ALL RIGHT. ON THE TRAFFICKING CHARGE, IT
12 WILL BE THE SENTENCE OF THIS COURT THAT MR. HARRIS BE
13 CONFINED TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30
14 YEARS. HE'LL GET CREDIT FOR THE TIME HE'S SERVED SINCE
15 NOVEMBER 1 OF '95. ON THE CARRYING A PISTOL UNLAWFULLY, THE
16 SENTENCE OF THE COURT IS CONFINEMENT FOR ONE YEAR. THAT WILL
17 RUN CONCURRENT.

18 MR. SALLEY: THANK YOU, YOUR HONOR.

19 THE COURT: I'VE TALKED WITH JUDGE CLARY. LET MR.
20 HARRIS STAY IN HERE FOR JUST A SECOND. BECAUSE A REQUEST HAD
21 BEEN MADE WITH THE DEATH IN HIS FAMILY THAT HE BE TRANSPORTED
22 TO THE FUNERAL. JUDGE CLARY INDICATED THAT AT SOME TIME
23 DURING THIS SIX MONTHS HE HAD HAD DISCUSSIONS WITH DETENTION
24 FACILITY PERSONNEL, THAT THERE HAD BEEN SOME PROBLEMS, AND HE
25 HAD SIMPLY ADOPTED A POLICY THAT HE WILL NOT DO THAT. HE