

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge, John D. McLeod

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

S.C. Dept. of Corrections Respondent,

v.

Stefen E. Harris, #208563 Appellant.

FINAL BRIEF

April 23, 2014

APPELLANT

Stefen E. Harris #208563

Ker. C. I. / PB-33

4848 Goldmine Hwy

Kershaw, S.C. 29067

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

I. A SENTENCING SHEET DOES NOT DEFINE DETENTION, OVER A ORAL PRONOUNCEMENT. IF THERE EXISTS A VARIANCE BETWEEN THE TWO.

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Stefan E. Harris ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant is appealing the unilateral Modification of sentence, with an additional penalty being added by changing Appellant's sentence, which changed appellant's max out date from August 1, 2012 to November 1, 2020. On June 3, 2010 by SCDC when appellant's sentence was recalculated. (R.P. Step One Grievance)

Appellant filed Step One Grievance on January 15, 2013. This grievance was investigated and denied February 7, 2013. (R.P. Step One Grievance) Appellant filed a Step Two Grievance on February 7, 2013. This grievance was investigated and denied August 13, 2013. (R.P. Step Two Grievance)

After the appellant filed, Appellant Brief on November 16, 2013, the A.C.C. affirmed S.C.D.C.'s final decision finding that the Department's calculation of appellant's sentence; December 10, 2013 is affirmed. The A.C.C. rejected Appellant's arguments for failing to produce any record to the contrary.

The appellant now files the Final Brief claiming his sentence does not require a mandatory minimum term. By reason, of one not being announced in Court by the Judge. (R.P. transcript from Appellant Brief)

For these additional reasons that follow appellant respectfully request that this sentence be corrected, to reflect the sentence that was imposed by the Court. Since the sentence should not have been changed absent the discretion of the Court, to do so

STANDARD OF REVIEW

When the Judge announces the sentence from the bench. The Court speaks through its judgement and not through any other medium. What was said by the

Judge in the course of his opinion may be significant as a precedent... [w]e should carry out the true intention of the sentencing Judge as this may be gathered from what he said at the time of sentencing. We defer to the Court's orally pronounced sentence and related Justifications U.S. v. Daddino, 5 F.3d 262, 266

Although a court speaks through its Judgements and orders, in criminal cases the general rule is that the oral pronouncement of the sentence governs. The correct penalty is the one in effect at the time of sentencing... On the ground that provision for imprisonment was inserted by clerk but was not included in sentence pronounced by Court.

"In interpreting sentence, the Department looks to the sentence imposed, not to statutes. Moreover, only if there is an ambiguity in the sentences, must the Department or the Court ascertain the intent of the Judge..." Moreover, the Department's construction of the sentencing Judge's intent and... Court's pronouncement and rationale announced in Court. State v. Atkins, 303 S.C. 214, 308 SE2d 760

ARGUMENT AND CITATION OF AUTHORITY

A SENTENCING SHEET DOES NOT DEFINE DETENTION, OVER A ORAL PRONOUNCEMENT. IF THERE EXIST A VARIANCE BETWEEN THE TWO.

Interest of judicial economy and fairness to all concerned parties required... for clarification of sentence and to permit the court to issue a new judgement order which was internally consistent and also consistent with the orally pronounced sentence. See U.S. v. Ruffin, 117 Fed. Appx. 239

It is normally the rule that where a conflict exists between an orally pronounced sentence and the written judgement, the oral sentence will control. U.S. v. Morse, 344 F.2d 27, 30 We note that the sentence judgement order is inconsistent with the sentence announced... [to] amend the judgement to conform to the orally pronounced sentence.

The sentence to be served is that pronounced in the defendant's presence in open court, not that set out in the written Judgement of the Court. U.S. v. Toney, 18 Fed. Appx. 61 It would appear that the interpretation contravenes the intent of the sentencing Judge because it appears the sentencing Judge did not intend for the element of the mandatory term because it was "not included in the sentence orally pronounced by the Judge" "A warrant of commitment departing in matter of substance from the Judgement back it void" Boyd v. Archer, (C.C.A.) 42 F.(2d) 43

Sentence is imposed when it is orally pronounced. U.S. v. Layman, 116 F.3d 105, 108 (4th cir. 1997) Sentence orally pronounced from the bench is sentence and controls over any variance of written Judgement and Commitment order. Oral pronouncement of sentence controls over subsequent written Judgement until corrected in a direct proceeding, it says what it was meant to say and this by an irrebuttable presumption.

By making mention of a variance between the commitment and the sentence 'orally pronounced' shows that there is conflict. Thus creating an erroneous extension of Appellant's sentence.

CONCLUSION

With the Final presentation of these facts to show that appellant has not been fairly apportioned. Since S.C.D.C. has altered the sentence by recalculation and resentencing the Appellant to a new sentence. "A court will be cautious in applying such a doctrine where liberty is at stake." For the grounds layed out above the Appellant respectfully request to have this sentence interpreted correctly, to reflect the sentence announced in court by the Judge.

Respectfully Submitted,

Stefen E. Harris

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