

State of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court
Administrative Law Judge S. Phillip Lewski

ALC Case No. 17-ALJ-04-0163-AP

Appellate Case No. 2018-002243

John K. Massey, Jr. # 305341,

Appellant,

v.

South Carolina Department of Corrections,

Respondent

Appellant's Reply Brief

John K. Massey, Jr.

Pro-Se Appellate Defender

John K. Massey, Jr. # 305341

Macedugall Correctional Inst

1516 Old Gilliard Rd

Ridgeville, South Carolina 29472

Attorney for Appellant

RECEIVED

MAY 06 2019

SC Court of Appeals

Table of Contents

Table of Contents - - - - -	i
Table of Authorities	ii
Argument in Reply	1
Issues Presented	
I. The South Carolina Department of Corrections erred in failing to properly apply Appellate's jail time credit to both his consecutive sentences pursuant the contractual agreement of his sentence sheets and the judges sentencing intent.	2
Conclusion	4

Table of Authorities

Cases

Tant v. S. Carolina Dep't of Corr., 408 S.C. 334, 759
S.E.2d 398 (2014) reh'g denied (July 10, 2014) 2,34

Statutes

S.C. Code § 24-13-40 2

Argument in Reply

J. Statement of Facts

Appellant filed a Step One grievance on August 2, 2016 against SCDC, claiming his jail time credits were not properly applied; it was denied. Appellant filed a Step Two grievance on January 5, 2017; it was denied. Appellant then appealed to the Administrative Law Court (ALC) on March 30, 2017. In the ALC, he claimed two issues: (1) he was not given full time jail credits; (2) the jail time credits were not properly applied to both his consecutive sentence sheets pursuant the sentence sheets.

Subsequently, on December 29, 2017, SCDC conceded to Appellant's first issue - he was not given his full time jail credit - SCDC then amended his sentence and gave him 582 days credit, but failed to address Appellant's issue. Thereafter, on December 6, 2018, the ALC issued an Order of Dismissal. This appeal follows.

Issues Presented

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.

In Respondents brief, they simply failed to address any of Appellant's legal arguments; their brief was generic and vague. They failed to research and provide enough substantial evidence as a whole, leaving the record incomplete. Simply Respondent's cannot rely on the same argument and decision of the Administrative Law Court (ALC) without investigative review of all Appellant's claims.

Respondents nor this Court can negate the fact Appellant's claims cultivate from the fact an error of law occurred during Appellant's sentencing. As provided by the statutory provisions of S.C. Code Ann § 24-13-40, jail time credit is mandatory. S.C.D.C. agreed with this finding and granted Appellant his proper jail time credits. Redressing his first issue, but failing to review his second issue. This left the record incomplete.

In their brief Respondents cite Tant v. S. Carolina Dep't

of Corrections, 408 S.C. 334, 759 S.E. 2d 398 (2014). Tant states SCDC is held to an unambiguous sentence sheet. Surely the Department does not have the unlimited power to overrule controlling law. Both parties agree Tant controls the outcome of this issue, and both parties agree Appellant was given equal credit on both his sentence sheets.

Why then does Respondents state - "to give Appellant the jail time credit would be a windfall if he only served the time once but would receive the credit twice". (BoR p5), when it's not within the Department's authority to decide this matter.

This issue is elementary and is ruled by precedented law. Appellant's sentence sheets are not ambiguous; they are contractual agreements signed by all parties, and are the touchstone commandment of the judge's sentencing intent.

Moreover, like Tant, once the error was discovered by the ALL, Appellant was not given all his jail credits, and ambiguity or doubts relative to Appellate's sentence sheets became present, everything concerning Appellant's sentence from that point should have been construed in his favor. (BoA p 4). Furthermore, which sentence should the corrected credits been applied. (BoA p 3,4).

Appellant has proven by the record his jail credit were not properly applied; by the record both his sentences per the sentence sheets got equal credit; by the record SCDC is held to an unambiguous sentence sheet. (BOR p 3,4). And by the record the sentence sheets are to directly memorialize the judges sentencing intent, and by law are contracts that have to be upheld, especially by SCDC.

Conclusion

For the foregoing reasons stated above, and in Appellant's Initial Brief, this Court should grant Appellant relief and modify the decision of the ALJ and grant Appellant credit to both his sentence sheets or run Appellant's sentences concurrent in accordance with Tant.

Respectfully Submitted
John K. Massey, Jr

John K. Massey, Jr # 305341
MacDougall Correctional Inst.
1516 Old Billard Rd.
Ridgeville, S.C. 29472

April 29, 2019

State of South Carolina

In the Court of Appeals

Appeal From the Administrative Law Court

Administrative Law Judge S. Phillip Lewski

ALC Case No. 17-ALJ-04-0163-AP

Appellate Case No. 2018-002243

RECEIVED

MAY 06 2019

SC Court of Appeals

John K. Massey, Jr. # 305341,

Appellant,

v.

South Carolina Department of Corrections,

Respondent

Certificate of Service

Undersigned Counsel hereby certifies that today's date he mailed a copy of Appellant's Reply Brief and a Motion for Appointment of Counsel to the following parties last known address v.a U.S. Mail.

① Kensey E. Barrat
Office of General Counsel
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221

② Jenny A. Kitchings
S.C. Court of Appeals, Clerk
P.O. Box 11629
Columbia, S.C. 29211

S/ John K. Massey, Jr. # 305341
MacDougall Correctional Inst
1516 Old Gillard Rd
Ridgeville, S.C. 29472

April 29th, 2019

April 29th, 2019

Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

John K. Massey, Jr. #305341
MacDougal Correctional Inst.
1516 Old Gilliard Rd.
Ridgeville, South Carolina
29472

RE: John K. Massey, Jr. #305341 v. South Carolina Department of
Corrections, Appellate Case No. 2018-002243

Dear Ms. Kitchings:

Enclosed is the original copy of Appellant's Reply Brief, Motion
for Appointment of Counsel, and Proof of Service of each in the above
captioned appeal.

Thank you for your help in this matter.

Sincerely
John K. Massey, Jr.

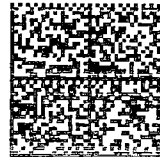
RECEIVED

MAY 06 2019

SC Court of Appeals

John K. Massey Jr #305341
MacDougal Correctional Inst.
1516 Old Billard Rd
Ridgville, South Carolina 29472

CHARLESTON
SC 294
03 MAY 19
PM 3 L



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 000.650
0000880723 MAY 03 2019
MAILED FROM ZIP CODE 29476

RECEIVED

MAY 06 2019

SC Court of Appeals

MacDougal Correctional Inst.
Mailroom

MAY 03 2019

RECEIVED

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, South Carolina

29211

2/12/19
MAIL ROOM

29211-162929

