THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Administrative Law Court

Honorable HW Funderburk, Jr., Administrative Law Judge

Appellate Case No.: 2019-001291

Terry Smith 160785 .....Appellant

v.

South Carolina Department of Corrections.....Respondent

INITIAL BRIEF OF APPELLANT

Terry Smith 160785 F4B 1239
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010
Pro Se Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Statement of the Issues on Appeal

I. Did the ALC improperly determine that the Appellant was not entitled to credit for the time spent in custody between his actual arrest in 2002 and his formal arrest in 2004?

II. Did the ALC improperly fail to apply moot analysis to the Appellant's grievance?

III. Is SCDC entitled to hold Appellant in custody by calculating his sentence start date pursuant to SC Code Ann Section 24-13-40 when the usage of the statutory provision directly provokes violations of the Appellant's 6th, 8th, and 14th Amendment rights under the Constitution of the United States, because the beginning of the Appellant's sentence should be constructed from the transmission of the warrant and the date of his actual arrest?

Statement of the Case

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal filed on July 26, 2019, by Terry Smith ("Appellant"), an inmate incarcerated in the South Carolina Department of Corrections ("Respondent" or "SCDC" or "government"). Appellant appeals the Final Order of the Honorable HW Funderburk, Jr., dated July 22, 2019 from the South Carolina Administrative Law Court ("ALC"), that issued from Appellant's first grievance of May 26, 2017, and second grievance of September 5, 2018, appealing SCDC's miscalculation of his sentence. The grievance proceeds from Respondent's miscalculation of Appellant's prior sentence that began in 1994, which Departmental miscalculation created a judicial miscalculation of the start of Appellant's current sentences.

In its Order, the ALC found that substantial evidence supported the Department's calculation of Appellant's sentences and concluded that they resulted from a proper application of law, *but in support of this conclusion* decided that the end-date of Appellant's 1994 sentences had no bearing on the start-date of Appellant's 2006 sentences, and further that any determination of the proper calculation of the 1994 sentences was moot—since the time had already been served out.

Both these preparatory conclusions, and consequently the final conclusion, are flawed.

Arguments

I. DID THE ALC IMPROPERLY DETERMINE THAT THE APPELLANT WAS NOT ENTITLED TO CREDIT FOR THE TIME SPENT IN CUSTODY BETWEEN HIS ACTUAL ARREST IN 2002 AND HIS FORMAL ARREST IN 2004?

The State delayed prosecution until 2006 despite having the Appellant in custody continuously beginning in July 2002, and relied on SC Code Ann § 24-13-40 to apply a sentence start-date beginning in 2006 (relying, plainly, on the Department-calculated end-date of Appellant's 1994 sentences.) Consequently, the supposed end-date of Appellant's prior sentences had direct consequence on the start-date of his current sentences. The ALC's determination that these were unconnected is plainly erroneous.

The Appellant was sentenced to concurrent service on his 2006 sentences at his sentencing in 2006, and this would include concurrent with whatever other sentences he was serving *at the time that the sentence should have legally begun*. The Department's miscalculation of 1994 sentence parole credits would mean that the Appellant's sentences would overlap, not abut, if properly calculated and sentenced. Time spent on parole must be calculated as time served, see *Sanders v MacDougall*, 135 SE 2d 836 (1964); and all time spent confined must be counted as time served based upon *Robinson v State*, 495 SE 2d 433 (1998): "[while] a convict is subject to a South Carolina detainer, he is constructively in South Carolina custody. As a result, a convict will receive credit for time spent in another jurisdiction while subject to a South Carolina detainer."

The Department outlines the sequence of events as follows: On August 2, 2000, Smith was released on parole. On May 2, 2002, Smith absconded from parole and a warrant was issued for his arrest. On January 17, 2004, Smith was arrested. On March 1, 2004, Smith's parole was officially revoked. But in fact, Smith was arrested on July 13, 2002, and Spartanburg law enforcement was duly

notified and transmitted a hold on the robbery warrants that were belatedly tried in 2006. [See Fax Sheet, NRPS; Fingerprint Identification, NRPS; and NRPS Vehicle Report.] The ALC's order in this matter clearly depends upon this not-so-subtle misstatement of material fact.

Since the Appellant was in fact entitled, in one form or another, to the time confined between 2002 and 2004, this time cannot be discounted in the sentence calculation of the 1994 sentences, and consequently will determine the proper sentence start-date for the 2006 sentences. The ALC's conclusion in this matter was erroneous.

II. DID THE ALC IMPROPERLY FAIL TO APPLY MOOT ANALYSIS TO THE APPELLANT'S GRIEVANCE?

Moot analysis is proper in any situation where a misapplication of law is capable of repetition but simply evades review. See *Curtis v State*, 345 SC 557, 549 SE 2d 591 (2001). In this case, the Department miscalculated Appellant's sentence credits on his 1994 sentences, but the ALC did not call proper attention to that matter, instead holding that the matter was irrelevant in the Appellant's case since the time had already been served.

But the full and proper duty of the ALC in such a matter is to provide clear guideline for the Department in the event of a future occurrence; and, the instant Appellant, while he might have been improperly deprived of liberty on the 1994 sentences, still has the potential for redress of that lost liberty in the current, 2006, sentences. Such a liberty interest is vital to the citizen concerned, while the State suffers no actual deprivation if the liberty from the 1994 sentences is restored from the 2006 sentences.

Consequently, the matter is not fully moot, because restorable liberty remains in the offing.

III. IS SCDC ENTITLED TO HOLD APPELLANT IN CUSTODY BY CALCULATING HIS SENTENCE START DATE PURSUANT TO SC CODE ANN SECTION 24-13-40 WHEN THE USAGE OF THE STATUTORY PROVISION DIRECTLY PROVOKES VIOLATIONS OF THE APPELLANT'S 6TH, 8TH, AND 14TH AMENDMENT RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES, BECAUSE THE BEGINNING OF THE APPELLANT'S SENTENCE SHOULD BE CONSTRUCTED FROM THE TRANSMISSION OF THE WARRANT AND THE DATE OF HIS ACTUAL ARREST?

Additionally, the Appellant was arrested in July 2002 in consequence of the warrants issued for his parole revocation and crimes alleged in 2002, and so any calculation of his time served must spring from the transmission of the warrant to the Canadian authorities—not the formal service of warrant and arrest that was delayed until the Appellant returned to South Carolina in 2004. See *Blakeney v State*, 339 SC 86, 529 SE 2d 9.

Spartanburg authorities notified Canadian authorities of the South Carolina warrants in July 2002, see above, and so the formal arrest in 2004 was of no consequence to the determination of the beginning of confinement. *Blakeney* is firmly established South Carolina precedent that the government here seeks to upend by an unconstitutional usage supposedly allowed by §24-13-40—a peculiar treatment reserved only for prisoners, which would be a violation of the Equal Protection Clause in any event.

The Appellant's 2006 sentences should have a start-date beginning in July 2002, and this proper application of law would render the rest of the matter irrelevant, as it would consume the sentence calculation within its outcome.

Conclusion

WHEREFORE, the Appellant is entitled to full redress from a gross miscarriage of justice that springs from the government's deliberate misconduct. "Prisoners remain citizens, and live also under the protection of the Constitution and the laws." See *Wolff v McDonnell*, 418 US 539 (1974) at III. The Appellant respectfully requests that the Court grant the following relief:

1. Order costs plus one dollar compensatory damages for the Appellant.

3. A Declaratory Order to force the Respondent to cease calculating sentences from the

sentencing-date of a latterly-imposed sentence, in violation of the constitutional rights of the citizens.

4. Order the Respondent to compute the sentence start-date for Appellant's 2002 warrants to begin at his 2002 arrest, despite that the government failed, in violation of the Sixth, Eighth, and Fourteenth Amendments, to prosecute those charges until 2006.

5. Provide such other and further relief that this Court may deem just and proper.

Respectfully Submitted,

September 26, 2019
Bishopville, SC

s/ Terry Smith

Terry Smith 160785 F4B 1239 Pro Se
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Administrative Law Court

Honorable HW Funderburk, Jr., Administrative Law Judge

Appellate Case No.: 2019-001291

Terry Bo Smith, 160785 .....

Appellant

v.

South Carolina Department of Corrections.....Respondent

Proof of Service

The undersigned hereby certifies that on September 26, 2019, true and correct copies of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal were served by depositing the same in the prison mail system, postage prepaid, to the following addresses:

Ms. Annie Laurie Rumler, Esquire
Dept of General Counsel
SC Dept of Corrections
PO Box 21787
Columbia SC 29221

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

September 26, 2019
Bishopville, SC

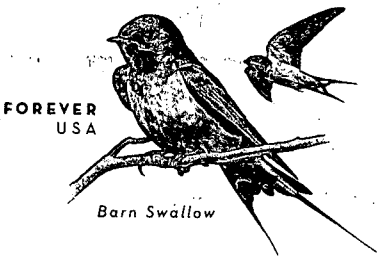
s/ Terry Smith

Terry Smith 160785 F4B 1239 Pro Se
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

TERRY SMITH, #160788

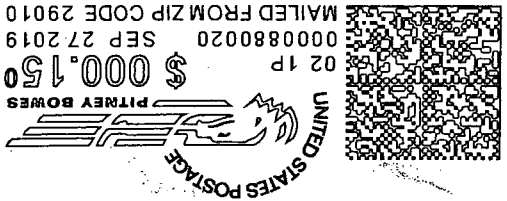
LEE CI F4B-1239
990 WISACKY HIGHWAY
BISHOPVILLE, SC 29010

29211-16529



RECEIVED
SEP 30 2019
SC Court of Appeals

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211



COLUMBIA
SC 290
30 SEP '19
PM 3L