THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
NOV 07 2019
SC 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

REPLY 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 ii
Arguments 1
Conclusion 3

TABLE OF AUTHORITIES

CASES

Blakeney v State, 339 SC 86, 529 SE 2d 9 2
Curtis v State, 345 SC 557, 549 SE 2d 591 (2001) 2
Sanders v MacDougall, 135 SE 2d 836 (1964) 1
State v Hackett, 363 SC 177, 609 SE 2d 553 (Ct App 2005) 1
Robinson v State, 495 SE 2d 433 (1998) 1
Wolff v McDonnell, 418 US 539 (1974) 2

STATUTES

SC Code Ann Section 24-13-40 2

Arguments

First, the Respondent correctly identifies that the root of this matter before the Court rests in the Appellant's grievance of May 26, 2017. In that grievance, the Appellant stated a broad claim without marking a particular point as the root of the Respondent's miscalculation of his sentence. Therefore, any matter which affects the Respondent's calculation of the Appellant's sentence is properly before this Court.

More specifically, the ALC failed to secure the records necessary to reach a proper conclusion. This failure to secure the proper documents rested primarily in the Respondent's hands, but while the ALC did ask the Respondent to produce additional documents, the ALC did not ask the Appellant to produce additional documents, although some documents had become available in the interim [Niagara Regional Police Service Reports detailing more than one topic] and the Appellant so informed the ALC by brief and motion [Appellant's Brief, March 2018; Motion for Expansion of the Record, April 2018]. These pertinent details [Spartanburg's transmission of notification of warrant-hold to Canadian authorities in 2002] could have been produced from the Spartanburg County records, but the Respondent withheld those pertinent portions of the Spartanburg file.

Accordingly, the ALC reached an erroneous conclusion that it now falls to this Court to correct. This failure on the part of the ALC that rests upon the Respondent's withholding of pertinent documents forms extraordinary circumstances that this Court has extraordinary power to correct.

As the Appellant has argued in his brief before this Court, the Respondent's current calculation of the max-out date of the Appellant's 2006 sentences comes as the fruit—the terminal point—of the Respondent's miscalculations. The Respondent's miscalculations seem plain in three (3) instances:

First, the Respondent denies the Appellant proper parole sentence credits between 2002 and 2004 by relying on *State v Hackett*, 363 SC 177, 609 SE 2d 553 (Ct App 2005), despite that Hackett controls the application of tolling for a probations case where the defendant was not in custody during the tolled period; but in the Appellant's case, the determination should be made in accordance with *Sanders v MacDougall*, 135 SE 2d 836 (1964) and *Robinson v State*, 495 SE 2d 433 (1998), which control the application of parole credits in cases where the defendant was actually in custody, even where that custody was in jurisdictions external to South Carolina. *Sanders*: "time spent on parole must be calculated as time served"; and *Robinson*: "[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 Appellant was held in Canadian custody from 2002 through 2004. As such, he is entitled to sentence credit for that period.

Second, even if the calculation of the Appellant's 1994 sentences proved irrelevant to the determination of the max-out date of the Appellant's 2006 sentences, the sentence start-date of the 2006 sentences is legally erroneous since it is determined by a conjunction between the Appellant's release from his 1994 sentences and his 2006 sentencing, but in fact it must be calculated from the transmission of the warrant to the Canadian authorities in 2002. This is in accordance with *Blakeney v State*, 339 SC 86, 529 SE 2d 9. The formal arrest in 2004 followed by the plea and sentencing in 2006 were not legally relevant to the calculation of the sentence start-date, since the warrant was transmitted in 2002 and the Appellant was held thereby and never released from custody during the entire period. The Respondent evidently seeks to upend this firmly established South Carolina precedent.

Third, if the calculation of the Appellant's 1994 sentences proved relevant to the determination of the start-date of the Appellant's 2006 sentences, through reliance upon SC Code Ann § 24-13-40, then the proper calculation of the 1994 sentences would not be moot, and must be properly determined instead of being left undetermined. The ALC, in any event, failed to apply moot analysis in a situation where such analysis was entirely appropriate (to guide the Respondent's future behavior in similar circumstances). See *Curtis v State*, 345 SC 557, 549 SE 2d 591 (2001).

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. The Appellant filed to this Court for appeal in 2018, and accordingly wishes to recover his expenses.

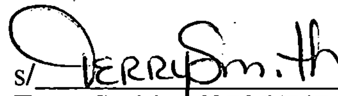
2. Order punitive damages by vacating or setting aside Appellant's 2006 sentences with prejudice, since they are derived entirely from the government's misconduct. Consequently Order Appellant's immediate release.

[Asked how punitive damages could be something other than money, the Appellant suggests that the government *prints* money, and has an endless supply; punitive damages should take from the government something that the government actually desires, and they seem to desire to hold the Appellant in custody.]

3. Remand the case for proper determination with all relevant documents.

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

Respectfully Submitted,



November 5, 2019
Bishopville, SC

s/
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 Reply Brief of Appellant was 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

RECEIVED
NOV 07 2019
SC Court of Appeals

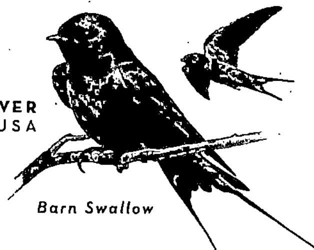
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

November 5, 2019
Bishopville, SC

s/ Terry Smith

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

Terry Smith #160785
LEE CI F4B-1243
990 Wisacky Hwy
Bishopville, SC
29010



RECEIVED
NOV 07 2019
SC Court of Appeals

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