

State of South Carolina
In the Court of Appeals

Appeal from the Administrative Law Court

Administrative Law Judge S. Phillip Leask:

ALC Case No. 17-ALJ-04-0163-A?

Appellate Case No. 2018-002243

John K. Massey, Jr. #305341

v.

South Carolina Department of

Corrections,

Final Brief

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SC Court of Appeals

Appellant,

Respondent,

John K. Massey, Jr. #305341
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Statement of Issue on Appeal

I. Did the South Carolina Department of Corrections err 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.

Statement of the Case

Appellate John K. Massey, Jr. filed an appeal before the Administrative Law Court (ALC) against South Carolina Department of Corrections (S.C.D.C.), he argued two issues: (1) he was not given his full time jail credit; and (2) his jail time credits were not properly applied to both his consecutive sentences pursuant his sentence sheets.

On December 6, 2018 the (ALC) ordered that Appellant's case be dismissed, The Court considered the case moot since (S.C.D.C.) corrected Appellant's jail time credits from 140 days to 582 days and updated Appellant's sentence on December 27, 2017. However, the Court failed to address Appellant's second issue; that once Appellant was given his corrected/updated jail time credits, the updated time was not properly applied.

Because of the Court Order, Appellant then filed a timely Notice of Appeal. This Brief follows.

Argument

I Did the South Carolina Department of Corrections err 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.

Relevant Facts

Appellant was found guilty by jury trial. He was sentenced to ten years for grand larceny and two years for malicious injury to property. The trial judge ordered the sentences to be served consecutively. During the sentencing proceeding, the solicitor argued Appellant was entitled to only 140 days of pre-trial detention time. Appellant objected and informed the Court he had served approximately two years detention time. However, the judge agreed with the solicitor's line of reasoning and recommendation; he then pronounced Appellant's sentence. Appellant was to serve on the grand larceny 10 yrs; the malicious injury to property 2 yrs consecutive and get "credit for 140 days on these two sentences which are consecutive." Appellant was given 140 days on both his sentence sheets. (R. 1-2).

Because Appellant timely objected to the judges sentence, the issue concerning the pre-trial detention time was preserved for

Appellate review: State v. John K. Massey, Jr. Case NO. 2015-002563.

The Court of Appeals heard Oral Argument on April 12, 2018 this will be discussed in greater detail below.

Moreover, Appellate filed an appeal with the (ALC), raising two issues: (1) he was not given all his pre-trial detention time; and (2) S.C.D.C. did not properly apply his jail time credits to both his consecutive sentences per his sentence sheets (R. 4-7).

On December 29, 2017, S.C.D.C. conceded to Appellant's argument, the trial judge did err, and he did not give Appellant all his pre-trial jail time. S.C.D.C. found Appellant had not served 140 days, but had actually served 582 days. Then, S.C.D.C. updated Appellant's sentence, but did not give the additional time to his second consecutive sentence. (R. 8).

On December 6, 2018, the (ALC) issued an Order of Dismissal, stating Appellant's appeal was moot because the Department had already given Appellant credit for 582 days. (R. 9-10).

Moreover, in the Court of Appeals, the State argued the same during Appellant's oral argument on April 12, 2018. The State argued the issue was moot because S.C.D.C. had already given Appellant credit.

Subsequently, the state, S.C.D.C. and Appellant agree to one part of Appellant's argument - the judge erred and Appellant was entitled to 582 days of credit. However, Appellant's second issue remained in place: S.C.D.C. did not correctly apply Appellant's jail time credit per his Sentence Sheets, even though, it was the judges sentencing intent to grant Appellant equal jail time credit to both his consecutive sentences. (R. 1-2 and R. 6)

Nevertheless, the (ALC) did not review Appellant's second issue and dismissed his appeal.

Discussion

Pursuant to Tart v. SCDC, 408 S.C. 334, 759 S.E.2d. 398 (2014), the Court ruled the D.O.C. is held to the face of the sentence sheet absent ambiguity. Moreover, when a sentencing sheet is signed by all parties - the judge, solicitor, and the defendant without objection - it memorializes the judges sentencing intentions no less than what is pronounced from the bench.

Thus, in theory, a sentencing sheet is a contract agreement - which is binding.

Furthermore, as recognized by this Court, interpreting S.C. Code Ann. § 24-13-40, it's mandatory a judge cannot deny a defendant

Credit for time served, and similarly held by this Court, S.C.D.C. cannot deny a defendant jail time credit for time served given by a sentencing judge per the defendant's sentencing sheets. Therefore, when Appellant filed his appeal with the CALC, by law he was entitled to relief on both issues. The judge erred as a matter of law in denying Appellant all his pre-detention credit, and S.C.D.C. erred by not properly applying all Appellant's jail time credit properly to both his sentences.

During Appellant's sentencing hearing, the judge pronounced Appellant get equal jail time credit to both his sentences - 140 days. S.C.D.C. and Appellant agree the judge gave credit for time served on both his sentence sheets; they both agree the judge erred and did not give Appellant his correct jail time credit. (R. 9-10). In fact, both agree Appellant was entitled to 582 days credit.

This corrected time should have been applied to both Appellant's sentences.

Like Tant, supra, Appellant asks, "What process must the Department engage in to determine an inmate's sentence as intended by the sentencing judge."

In S.C.D.C.'s Respondent Brief (R. 4-7), they argue that Appellant should only have been given his new amended jail time applied once and only to the leading sentence. If that is the case, which sentence is the leading sentence? Either sentence could have the same start date. And, if you applied the new updated time to either sentence, you would get (2) separate sentence completion dates. This itself is an ambiguous policy held by the Department, especially when trying to apply it to Appellant's case. (R. 2)

In Tant, the judge was silent as to which sentence was to be served consecutive. In my case, the Department's policy is silent as to which sentence would be the leading sentence, when both are given equal credit, and which sentence should have been given the amended time. According to the sentence sheets, the judge intended Appellant get time on both.

Thus S.C.D.C. created a constitutionally challengeable liberty interest. This happens anytime the length of an inmate's incarceration comes into question. Moreover, they compounded their error by failing to review Appellant's second issue concerning the amended time, and failing to uphold the contractual agreement of Appellant's sentence sheets.

Because if you follow SCDC's reasoning and apply the updated time to the Grand Larceny sentence, but not the Malicious Injury to Personal Property, Appellant's sentence ends in August 2020. But if you apply Appellant's updated time to his Malicious Injury to Personal Property sentence, but not his Grand Larceny sentence, Appellant's sentence would end August of 2019, and Appellant would be eligible for a mandatory furlough.

This has a significant effect against Appellant's constitutional liberties. In effect, SCDC would be changing Appellant's sentence. The authority to change a sentence rests solely in the hands of a sentencing judge within the exercise of his discretion. State v. Hicks, 659 S.E.2d 499, 500 (4 App 2008). SCDC does not have

this authority; exercise of sentencing authority by SCDC would violate the separation of powers doctrine. State v. Archie, 470 S.E.2d 380 (4 App 1996).

The seminal case dealing with this issue is Tant v. SCDC, *supra*. In Tant, the Court ruled, "SCDC is held to the face of the sentence sheet absent ambiguity, and although intent of the judge is controlling in determining whether sentences run concurrent or consecutive, ambiguity or doubt relative to a sentence should be resolved in favor of the accused." *Id.* The (ALC) erred as

a matter of law in dismissing Appellant's appeal as moot, and not properly applying Appellant's corrected jail credits to both his sentence sheets. In total, Appellant is entitled to 582 days credit applied correctly to his sentence. As a matter of law, once the error was found that Appellant was not given all his jail time, and his sentence needed correcting, the Department should have construed Appellant's sentence in his favor, in accord with Tant, supra.

Conclusion

Concerning Appellant's issue, Appellant respectfully requests this Court correct his sentence to reflect the judges sentencing intent that both sentences receive the same intended jail credit of 582 days; or correct Appellant's sentence in accordance with the mandatory provisions of controlling case law and construe Appellant's sentence in his favor.

Respectfully Submitted



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October 31st, 2019

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Certificate of Counsel

The undersigned certify that this Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings".

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