

IN THE COURT OF APPEALS OF SOUTH
CAROLINA

SPENCER UTSEY #192660

APPELLANT

v.

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

RECEIVED

SEP 16 2020

SC Court of Appeals

BRIEF OF APPELLANT

CLERK

The South Carolina
COURT OF APPEALS

P.O. BOX 11629

Columbia, S.C. 29211

SPENCER R. UTSEY #192660

F2-B-139

KIRKLAND CORR. INST.

4344 BROAD RIVER RD.

COLUMBIA, S.C. 29210

CLERK

S.C. ADM. LAW COURT

1205 PENNINGTON ST. SUITE 224

Columbia, S.C. 29201

GENERAL COUNSEL OFFICE

4444 BROAD RIVER RD.

Columbia, S.C. 29211

STATEMENT OF ISSUES ON APPEAL

1. The violent box isn't checked on appellant's sentencing sheet.
2. The Administrative Judge H. W. Funderburk Jr. was impartial on his rulings in case above.

STATEMENT OF CASE

ON JUNE 15 APPELLANT WAS SENTENCED TO A UNKNOWN AMOUNT OF TIME DUE TO THE SENTENCING SHEET NOT BEING CHECKED ON THE FACE OF APPELLANT'S SENTENCING SHEET, IN INDICTMENT NO. 99-GS-05-137, APPELLANT ARGUMENTS IS ON PG 4, 5, & APPELLANT CITES, TANT V. S.C. DEPT. OF CORR., 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014) REHEARING DENIED (JULY 10 2014), THAT THE VIOLENT BOX ISN'T CHECKED ON SENTENCING SHEET AND THIS IS IN CLEAR VIOLATION OF TANT, SUPRA.

SCDC HAS ME DOING A VIOLENT SENTENCE WHEN THE VIOLENT BOX ON SENTENCING SHEET WAS NOT CHECKED, THIS IS AN ENHANCEMENT OF SENTENCE AND VIOLATION OF SEPARATION OF POWERS DOCTRINE, NOT GETTING THE BENEFIT OF JUDICIAL ACTIONS, IN CLEAR VIOLATION OF STATE V. ARCHIE (S.C. APP-1996) 470 S.E.2d 380 REHEARING DENIED.

I, APPELLANT FILED A STEP 1 GRIEVANCE; GRIEVANCE NO. RCF 1088-19; I, APPELLANT FILED A STEP 2 GRIEVANCE RCF 1088-19 AND I ALSO A NOTICE OF APPEAL AFTER APPELLANT'S STEP 1 AND 2 GRIEVANCES WERE DENIED. AND APPELLANT ADMINISTRATIVE LAW COURT APPEAL WAS DENIED BY JUDGE H. W. FUNDERBURK IN FINAL ORDER DATED 7-30-2020. APPELLANT ALSO FILED A NOTICE OF APPEAL WITH THE ADM. LAW COURT DATED 2-28-2020. NOW APPELLANT IS ON APPEAL STEMMING FROM A S.C. COURT OF APPEAL ORDER IN ABOVE CASE.

Authority of Law and Index

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IN THE COURT OF APPEALS OF SOUTH
CAROLINA

INITIAL BRIEF

RE: Appellate Case
No. 2020-001124

S/ Spencer Atkey
SPENCER ATKEY #192660

BRIEF OF APPELLANT

I, APPELLANT do hereby come before
the COURT in the above case with A INITIAL BRIEF,
grounds below:

1. The violent box isn't checked on Appellant's
sentencing sheet.

ARGUMENT

SCDC has Appellant doing a violent
sentence, when the violent box on sentencing
sheet was not checked, thus is an enhancement of
sentence and violation of separation of power
doctrine, not getting the benefit of judicial
actions, in clear violation of State v. Archie
(S.C. App. 1996) 470 S.E.2d 380 rehearing denied,
GRANT the case for the above.

2. The administrative judge H.W. Funderburk
JR, was impartial on his rulings in case above

IT IS CLEAR FROM THE FINAL ORDER OF THE DISCUSSION pg 2. signed by Judge Funderburk of the Adm Law Court dated 7-30-2020. The judge admits on lines 9-10, states in part: IT makes clear that Appellant was charged, indicted and convicted of Armed Robbery and sentenced to thirty years. The Judge Funderburk couldn't state thirty years 85% NOT by being under the oath, BUT the judicial conduct was violated because the final order is a fraud order Judge Funderburk knowing the law and caselaw and wouldn't grant Appellants case.

From the face of the sentencing sheet the Judge Funderburk cannot discern or grasp that Appellant is doing a violent sentence the violent box isn't checked on Appellant sentencing sheets Judge Funderburk has been bias, impartial, and went outside of his judicial role. See Stump v. Sparkman, 435 U.S. 349, 351-64 (1978).

The trial judge must ~~be~~ act with absolute impartiality in the performance of judicial duties. State v. Pace (S.C. 1994) 316 S.C. 711 447 S.E. 2d 186.

Judge Funderburk also verbally alternated charged the sentencing sheet intentionally and put in his findings that Appellant is serving a 85% sentence when there is no proof of this in the records, see sentencing sheet in its entirety Appellant can't be made to do a violent sentence upon no proof of it. there is a ambiguity and nobody can pick one out of lets say unlimited.

Ambiguity - expression or an expression obscure because subject to more than one interpretation, even if Judge Funderburk states Appellant is under § 16-11-330(a), there is no way possible to say its a violent sentence, because its not on the

Sentencing sheet and the sentence could of been violent or non-violent. Then SCOC and Adm. Law Court admitted that the violent box isn't checked on Appellant's sentencing sheet, in clear violation of TANT v. S.C. Dept. of Corrections, 781 S.E.2d 914 (Ct. App. 2014).

AN ACT OF PERJURY OR concealment of a document coupled with intentional scheme to defraud the court justifies the setting aside of a judgment due to extrinsic fraud. Ray v. Ray, (S.C. 2007) 374 S.C. 79, 647 S.E.2d 237, rehearing denied. Judge H. W. Funderburk went outside of his judicial role, concealed law intentionally and used word play, a scheme, intentionally, defraud the court in clear violation of Canon 50/ ACR and Ray supra. A judge is to act with fairness and impartiality at all times. Semantics - change of meaning in language. GRANT the case for the above.

Spencer Utsey # 192666
Spencer Utsey # 192666

SPENCER WISEY
Appellant

IN THE COURT OF APPEALS OF
SOUTH CAROLINA

v.
S.C. DEPT. OF
CORR.
Respondents

9/11/2020 Certificate of
Service

RE: Appellate case# -

RECEIVED 2020-001124

SEP 16 2020

SC Court of Appeals

I do hereby aver that I Appellant did
serve the Court of Appeals, S.C.; The Adm. Law
Court; SCOC, on 9/11/2020, with a Final
Brief and placed copies of same in KCF, mail system
on 9/11/2020

CLERK
S.C. COURT OF APPEALS
P.O. BOX 11629
Columbia, S.C. 29211

SPENCER WISEY #192660
F2-B-139
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S [Spencer Wisey
SPENCER WISEY #192660

SPENCER UTSEY #192660
F2-B-139

RIVERLAND CORR. INST,
4344 Broad River Rd,
Columbia, S.C. 29210

SCDC

SEP 15 2020

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~~Inter Agency~~ (66)

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SEP 16 2020

SC Court of Appeals

CLERK

THE SOUTH CAROLINA COURT
OF APPEALS

P.O. BOX 11629

COLUMBIA, S.C. 29211

SCDC

SEP 24 2020

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