

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE H. W.  
FUNDERBURK, JR.

ALL CASE NO. 19-ALJ-04-0155-AP  
APPELLATE CASE NO. 2020-00124

SPENCER WTSEY #192660 ..... Appellant,

v.

SOUTH CAROLINA DEPT. OF CORR. .... Respondent

Final Brief of Appellant

**RECEIVED**

FEB 16 2021  
SC Court of Appeals

#192660  
SPENCER WTSEY  
F2-B-139  
KIRKLAND CORR. INST.  
4844 Broad River Rd.  
COLUMBIA, S.C. 29210

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## STATEMENT OF ISSUES ON APPEAL

① JUDGE FUNDORBERG OF ADMINISTRATIVE LAW COURT Columbia in case # 2020-001124, SPENCER v. SCDP #192660 v. SCDP committed fraud when he seen ambiguity within sentencing sheet and made a false ruling.

② The sentencing sheet is ambiguous

TABLE OF AUTHORITIES

STUMP V. SPARKMAN, 435 U.S. 349, 352-64 (1978)  
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TANT V. S. CAROLINA DEPT OF CORR., 408 S.C.  
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~~§16-11-330~~

§16-11-330(a)

TANT V. S. CAROLINA DEPT OF CORR., 408  
S.C. 334, 337, 759 S.E.2d 398, 404 (S.C.  
2014)

# STATEMENT OF THE CASE

THIS MATTER COMES BEFORE THIS COURT PURSUANT TO AN APPEAL OF SPENCER UTSEY (APPELLANT) ON DECEMBER 11, 2020, APPELLANT FILED A STEP ONE GRIEVANCE REGARDING THE CLASSIFICATION OF ARM ROBBERY CHARGE SENTENCE. ON JANUARY 6, 2020, IT WAS CONSIDERED DENIED AFTER IT WAS DETERMINED THAT APPELLANT'S SENTENCE IS CLASSIFIED AS A VIOLENT OFFENSE, AND ADMITTED THAT THE VIOLENT BOX ISN'T CHECKED ON APPELLANT'S SENTENCING SHEET IN CASE # 99-GS-05-137. ON JANUARY 7, 2020, APPELLANT FILED A STEP 2 GRIEVANCE AND ON FEBRUARY 6, 2020, THE GRIEVANCE WAS ALSO DENIED BECAUSE SCDC AND OTHER AUTHORITY OF LAW CLASSIFIED APPELLANT'S SENTENCE AS VIOLENT WITHOUT PROOF.

APPELLANT THEN APPEALED THE DECISION BY FILING A NOTICE OF APPEAL WITH THE ADMINISTRATIVE LAW COURT. ON JULY 30, 2020, JUDGE FUNDERBURK ISSUED AN ORDER AFFIRMING THE DECISION OF SCDC THAT APPELLANT'S SENTENCE WAS CLASSIFIED CORRECTLY. THIS APPEAL IS AS FOLLOWS.

JUDGE FUNDERBURK OF ADMINISTRATIVE  
LAW COURT Columbia in case # -2020-001124,  
SPENCER WITSEY # 192660 V. SCDC COMMITTED  
FRAUD WHEN HE SEEN AMBIGUITY WITHIN SENTENCING  
SHEET AND MADE A FALSE RULING AND DID NOT  
NOTE ON THE AMBIGUITY WITHIN THE SENTENCING  
SHEET.

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  
ARM ROBBERY AND SENTENCE TO THIRTY YEARS.  
THE JUDGE FUNDERBURK COULDN'T STATE THIRTY  
YEARS 85% NOT BY BEING UNDER THE OATH, BUT THE  
JUDICIAL CONDUCT WAS ~~VIOLATED~~ VIOLATED BECAUSE  
THE FINAL ORDER IS A FRAUD ORDER JUDGE FUNDERBURK  
THE LAW AND CASELAW AND WOULDN'T GRANT APPELLANT 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  
SHEET. 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 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, CHANGED THE SENTENCING SHEET  
INTENTIONALLY AND PUT IN HIS FINDINGS THAT

APPELLANT IS SERVING 85% SENTENCE WHEN  
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 AN AMBIGUITY AND NOBODY CAN  
PICK ONE OUT OF LETS SAY UNLIMITED.

(AMBIGUITY - EXPRESSION OR AN  
EXPRESSION OBSCURE BECAUSE SUBJECT TO MORE  
THAN ONE ~~INTERPRETATION~~ 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. IMMEDIATE RELEASE FOR ABOVE  
FROM PRISON.

The sentencing sheet is ambiguous  
see below

The sentencing sheet is ambiguous and having two different meanings or more. See step 2 grievance attached here. SCOC admitted they classified the charge ARM ROBBERY as violent and Appellant could be able to defend respondent initial brief better but Appellant has not received the things to be included in the record such as (1) step 1 grievance form, (2) step 2 grievance form, (3) Administrative Law Court filings, and (4) Administrative Law Judge Funderburk's order of dismissal dated July 30, 2020.

SCOC is confined to the face of the sentencing sheets in determining the length of a sentencing [unless...] there is an ambiguity in the sentencing sheets, TANT v. S.C. CAROLINA DEPT OF CORR. 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), req denied (July 10, 2014). Appellant sentencing sheet is ambiguous it does not have the violent box checked and the judge did not put on the sentencing sheet § 16-11-330 whether or not the sentence was violent or nonviolent.

Whether a sentencing transcript or sentencing sheet is ambiguous is a question of law. See TANT v. S.C. DEPT. OF CORR. 759 S.E.2d 398, 404 (S.C., 2014).  
Release Appellant from prison - immediate  
6 SP Spencer w sent #192602

SCDC/RESPONDENTS COUNSEL

MS. CHRISTINA ~~CATOE~~ BIGELOW, ESQ.

MS. EMANUELE DIANE BYAS, ESQ.

both can be contacted at address:

GENERAL COUNSEL  
4444 BROAD RIVER RD.  
COLUMBIA, S.C. 29221

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2**

DUE: 1/13/2020

INMATE NAME: Spencer Utsey  
 SCDC NUMBER: 192660  
 INSTITUTION: Kirkland CI  
 HOUSING UNIT: F2-B-139  
 WORK ASSIGNMENT: DORM

INMATE GRIEVANCE

JAN 10 2020

**Office Use Only**  
 Grievance No. WCI-1098-19  
 Code: General \_\_\_\_\_  
 Policy \_\_\_\_\_  
 Disc. Hear. \_\_\_\_\_  
 Class. CTCI  
 Date Received JAN 08 2020  
 IGC Initials (14)

**INMATE'S REASON FOR APPEAL (state specific dissatisfaction):** Immediate release for herein SCDC records do NOT have me as a violent offender that they admitted to. The violent box is not checked on grievant sentencing, this is a violation of separation of power doctrine, and getting the benefit of judicial actions and SCDC is still laboring me as a violent offender. In clear violations of Spencer Utsey 1/7/2020  
Archie V. State, 470 S.E.2d 380.  
 Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

I have reviewed your concern. In your grievance you stated that SCDC is having you to serve a violent sentence when you have not been sentenced as such. You also stated that this is a violation of your rights. You would like to be immediately released from prison. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 1/6/2020. You were found guilty of violating SC Code of Laws 16-11-330, Armed Robbery and sentenced on 6/15/1999 to 30 years which is state and SCDC classified as violent. You have a mandatory service requirement of 25 years, and 6 months. Your projected release date is 6/1/2025. You have 299 good time credits and 589 earned work credits for a total service time earned of 7,533 days. You are currently earning a 3F5 work level and no earned education credits. You have not shown that SCDC staff have failed to perform their job duties properly.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Spencer Utsey 2/6/20  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_ IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

(SEE REVERSE SIDE FOR INSTRUCTIONS)

FORM 14  
DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Harold W. Funderburk, Jr., Administrative Law Judge

Case No. 2020ALJ040155AP

Spencer Utsey, #192660, Appellant,

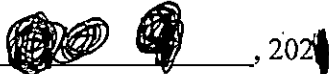
v.

South Carolina Department of Corrections, Respondent.

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. FACT - Adm. Law Judge H.W. Funderburk that he committed fraud because the sentencing sheet
  2. contained ambiguity - having a obscure or more
  3. than one meaning in ~~the~~ packet no.
  4. 20 - ALJ - 040155 - AP - Immediate Release
  5. for above
  6. 2. Review the step 2 GR hearing for ambiguous
  - within and SCAC - General Counsel committed fraud when seen the violation and would not rule.
- I certify that this designation contains no matter which is irrelevant to this appeal.

 2021  
2 - 3

/s/ Spencer Utsey #192660  
Spencer Utsey, #192660  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, SC 29210