

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPELLATE CASE NO: 2013-000483

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
HONORABLE SHIRLEY C. ROBINSON  
ADMINISTRATIVE LAW JUDGE

APPEAL FROM FINAL DECISION  
S. C DEPT OF CORRECTIONS

12-ALJ-04-0945-IJ  
CAVEANCE #RCI-0149-12

CURTIS RICHARDSON # 269166

APPELLANT

RECEIVED

APR 10 2013

SC Court of Appeals

V

S C DEPARTMENT OF CORRECTIONS

RESPONDENT

BRIEF OF APPELLANT

I SWEAR UNDER PENALTY OF PERJURY THE CONTENTS  
OF THIS BRIEF ARE TRUE AND CORRECT

SWORN TO BEFORE ME THIS  
2 DAY OF April 2013

MY COMMISSION ~~EXPIRES~~ My Commission Expires December 2013  
Catherine A. Ormaez

NOTARY PUBLIC OF SOUTH CAROLINA

st Curtis Richardson  
CURTIS RICHARDSON  
269166 PB47  
4848 COLLINGWOOD HWY  
KERSHAW SC 29067

# TABLE OF CONTENTS

TABLE OF AUTHORITIES

ii

STATEMENT OF ISSUES ON APPEAL

iii

STATEMENT OF THE CASE

1

ARGUMENTS

2, 3, 4, 5

1. DID THE RESPONDENTS FAILURE TO RESPOND TO THE APPELLANTS MOTION RENDER DEFAULT JUDGMENT?
2. DID THE RESPONDENTS FAILURE TO RESPOND TO APPELLANTS STEP 2 EXHAUST ADMINISTRATIVE REMEDIES?
3. DID THE SCDJ'S CHANGING APPELLANTS SENTENCE FROM NONVIOLENT AND PAROLE ELIGIBLE TO VIOLENT AND NOT PAROLE ELIGIBLE CONSTITUTE AN EX POST FACTO VIOLATION

CONCLUSION

6

RECEIVED

APR 10 2013

1st Court of Appeals

# TABLE OF AUTHORITIES

## CASES

ALLEN V LOWDER 875 F2D 82 (4TH CIR 1989)

BROWN V EVATT 470 SE2D 848

CAIFFIN V STATE 433 SE2D 862

JERNIGAN V STATE 531 SE2D 507

LANCE V MATHIS 717 SCT 891 (1997)

FENDER V THOMPSON 883 F2D 303 (4TH CIR 1989)

MELVIN V NIKOLOPOULOS 864 F2D 301

SHAWANZ V MUNCEP 834 F2D 396 (4TH CIR 1987)

WARDEN V MARRERD 94 SCT 2532

WEAVER V GRAHAM 101 SCT 960

ROLLER V CAVANUGH 984 F2D 120 (4TH CIR, CT APP)

PAINÉ V BAKER 595 F2D 197 (4TH CIR 1979)

ELMORE V STATE 409 SE2D 397

## STATUTES

SC RULES OF CIVIL PROCEDURE 65 (F) (1)

SC CODE ANN 24-21-620

ADMINISTRATIVE LAW COURT RULE 63

INMATE GRIEVANCE POLICY RESPONSES 11. RESPONSES

## STATEMENT OF ISSUES ON APPEAL

1. DID THE RESPONDENTS FAILURE TO RESPOND TO THE APPELLANTS MOTION RENDER DEFAULT JUDGMENT?

2. DID THE RESPONDENTS FAILURE TO RESPOND TO APPELLANTS STEP 2 EXHAUST ADMINISTRATIVE REMEDIES?

3. DID THE SCD C'S CHANGE APPELLANTS STATUS FROM NONVIOLENT AND PAROLE ELIGIBLE TO VIOLENT AND NOT PAROLE ELIGIBLE CONSTITUTE AN EX POST FACTO VIOLATION?

!!!

STATEMENT OF THE CASE

IN SEPTEMBER 2011, I WAS SENTENCED TO (5) FIVE YEARS IN PRISON (NONVIOLENT AND) PAROLE ELIGIBLE BY THE HONORABLE COUNTY COURT OF GENERAL SESSIONS.

UPON ADMISSION TO THE SCDC, THE SCDC (CHANGED) MY COURT ORDERED SENTENCE TO VOLUNTARY AND NOT PAROLE ELIGIBLE.

BASED ON THIS ADMITTEDLY FALSE INFORMATION I WAS DENIED A TIMELY HEARING AND SUBJECTED TO AN ILLEGAL SENTENCE UNDER THE EX POST FACTO PROHIBITION

# ARGUMENT 1

RESPONDENTS FAILURE TO RESPOND TO APPELLANTS MOTION REWARDED DEFAULT JUDGMENT.

PRIDE TO THE ALJ DISMISSAL. (ADMINISTRATIVE LAW JUDGE)  
APPELLANT FILED A MOTION FOR RELEASE FROM PRISON  
AND AWARD OF DAMAGES. THIS MOTION WAS DATED DEC-  
EMBER 26, 2012 AND TIMELY AND PROPERLY SERVED  
ON THE COURT (ALJ) AND RESPONDENTS (WHOM AS OF  
THE CURRENT DATE FILED NO RESPONSE.  
PURSUANT TO RULE 63 AND 62 OF THE ALJ, THE ALJ  
SHOULD HAVE GRANTED RELIEF IN APPELLANTS FAVOR.  
HOWEVER, WITHOUT EVEN A RULING ON APPELLANTS MOTION  
THE ALJ DISMISSED THE APPEAL PREMISED UP.

## ARGUMENT 2.

THE FAILURE TO RESPOND TO APPELLANT'S STEP 2. AS OF THE CURRENT DATE EQUALS AN EXHAUSTION OF THE SCDC ADMINISTRATIVE GRIEVANCE REMEDIES.

THE STEP 2 WAS FILED IN MARCH OF 2012, HOWEVER THE RESPONDENTS HAVE FAILED TO ANSWER THE STEP 2 IN VIOLATION OF THEIR OWN SCDC ESTABLISHED POLICY (SEE ATTACHED) EXHIBIT C

THEREFORE, THIS HONORABLE COURT SHOULD DEEM THE GRIEVANCE PROCEDURE IS EXHAUSTED AS APPELLANT SHOULD NOT HAVE TO WAIT FOREVER FOR RESPONDENTS RESPONSE.

THIS COURT SHOULD RULE THAT IT WILL NOT TOLERATE THE RESPONDENTS FAILURE TO ADHERE TO ITS OWN ESTABLISHED POLICY.

## ARGUMENT 3.

UPON ADMISSION TO THE SCDC, THE SCDC CHANGED MY COURT ORDERED SENTENCE TO VIOLENT AND NOT PAROLE ELIGIBLE IN VIOLATION OF THE EX POST FACTO CLAUSE.

BASED ON THIS ADMITTEDLY FALSE INFORMATION I HAVE BEEN DENIED PAROLE ELIGIBILITY AND DENIED A PAROLE HEARING AND EQUAL PROTECTION AND APPLICATION OF LAW.

(DENIAL OF PAROLE BASED ON ADMITTEDLY FALSE INFORMATION DENIES DUE PROCESS) SEE PAINE V BAKER 595 F2D 197 4TH CIR 1979 CERT DENIED 444 US 925. ALSO SEE MONROE V THORPE 932 F2D 1437.

24-21-620 ESTABLISHES "WITHIN 90 DAYS PRECEDING HAVING SERVED 1/4 OF HIS SENTENCE THE BOARD EITHER ACTING IN A THREE-MEMBER PANEL OR MEETING AS A FULL BOARD SHALL REVIEW THE CASE."

I THEN BEGINNING IN SEPTEMBER 2011 STARTED MY COMPLAINTS VIA GRIEVANCE PROCEDURE.

HOWEVER THE SCDC GRIEVANCE PROCEDURE IS EXHAUSTED AS STEP 2 WAS FILED FEBRUARY 2012.

4.

AS FOR PAROLE ELIGIBILITY AND NONVIOLENT AS PART OF PLEA 1 I WAS ADVISED BY COUNSEL AND COURT THAT I WOULD BE SAME.

HOWEVER THE SCDC HAS FAILED TO REPLY AS OF THE CURRENT DATE IN VIOLATION OF THE 214 DAYS TIME LIMIT TO COMPLETE THE SCDC GRIEVANCE PROCEDURE RESPONSES.

ALTERNATIVELY PCR COUNSEL HAS STATED THAT HE "CAN NOT AND WILL NOT RAISE THIS ISSUE ON PCR"

MY SENTENCE HAS BEEN ILLEGALLY ALTERED EXTENDED AND ENHANCED AND MY CLASSIFICATION / CUSTODY INTENSIFIED BY SCDC

PETITIONER RELIES ON BROWN V EDAT 470 SE2D 848, FENDER V THOMPSON 883 F2D 303 (4TH CIR 1989), ROLLEN V CAVANAUGH 984 F2D 301, WEAVER V GRAMHAM 101 SCT 960, WARDEN V MARLER 94 SCT 2532, SCHWANTZ V MUNCY 834 F2D 396 (4TH CIR 1987) "ALL IN SUPPORT OF HIS POSITION."

ALSO SEE GRIFFIN V STATE 432 SE2D 864, LYNCE V MATHIS 117 SCT 891 (1997), JERNIGAN V STATE 531 SE2D 507. ALSO SEE ELMORE V STATE 409 SE2D 397, WHERE THE COURT HELD "PROVIDING INCREASED PAROLE ELIGIBILITY TIME WOULD RESULT IN AN EX POST FACTO VIOLATION."

## CONCLUSION

THIS HONORABLE COURT ISSUE AN ORDER GRANTING RELEASE FROM PRISON AND DAMAGES PURSUANT TO RULE 65 (F) (1) AS PETITIONER IS SUBJECTED TO AN ILLEGAL SENTENCE BASED ON THE SCID APPLICATION OF EX POST FACTO LAW TO SENTENCE AND ANY OTHER RELIEF DEEMED JUST AND PROPER WITHIN THE JURISDICTION OF THIS COURT.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPELLATE CASE NO: 2013-000483

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
HONORABLE SHIRLEY C. ROBINSON  
ADMINISTRATIVE LAW JUDGE

---

APPEAL OF FINAL DECISION  
S. C. DEPARTMENT OF CORRECTIONS  

---

ALTJ-04-0945-IJ

CURTIS RICHARDSON

APPELLANT

✓

S.C. DEPT OF CORRECTIONS

RESPONDENT  
RECEIVED

APR 10 2013

PROOF OF SERVICE

SC Court of Appeals

THIS IS TO CERTIFY THAT I SERVED ~~OF~~ A COPY OF ORIGINAL BRIEF OF APPELLANT ON THE FOLLOWING PARTIES BY PLACING A COPY OF SAME IN THE U.S. MAIL POSTAGE PREPAID ON MARCH 31, 2013 ADDRESSED

HONORABLE V. CLAIRE ALLEN  
DEPUTY CLERK COURT OF APPEALS  
1015 SUMNER ST  
COLUMBIA SC 29201

CHRISTOPHER D. FLORIAN  
OFFICE OF GENERAL COUNSEL  
4444 BADAW RIVER RD  
COLUMBIA SC

JANA SHEALY  
ADMINISTRATIVE LAW COURT  
1205 PENNINGTON ST SUITE 224  
COLUMBIA SC

St. Curtis Richardson