SOUTH CAROLINA COURT OF APPEALS

Appeal from Administrative Law Court
Hon. H. W. Funderburk, Jr.

Appeal Case No. 2019-001410

Gregory Perrillo 312332, Appellant

v.

SC. Dept of Corrections, Respondent

PETITION FOR REHEARING

Gregory Perrillo 312332
Evans CI F4A275
610 Hwy 9 west
Bennettsville SC 29512
Appellant, Pro se.

The appellant, Gregory Perrille 312332, pursuant to Rule 221 SCACR, moves the Court to Reconsider its 09, of March, 2022 opinion. In support of the motion, the appellant shows the following to the court;

MEMORANDUM OF AUTHORITIES

The following is enclosed as supporting documents;

- Appellants ALC, Response to Order
- Appellants' Reply Brief/ Motion to Strike
- Appellants Reply to Response, to the Court of Appeals
- Appellants Final Brief.

This court overlooked the following issues, in material facts, statutes, and controlling authorities, in the following respects;

ISSUES

- Did the ALC and Court of Appeals err, in finding there was substantial evidence to support it's determination?
- Did the Court of Appeals err in affirming the ALC's decision; When the decision of the U.S. Supreme Court is in conflict, and When the decision of the Court of Appeals Violates Constitutional Prohibitions against Ex Post Facto clause, 8th Amend (Cruel and unusual Punishment) and

CASES

STATUTES

STATEMENT OF THE CASE

On November, 07, 2005. Appellant was Sentenced in Horry County to twelve (12) years for Kidnapping on indictment # 2005-GS-2054.

On August 09, 2010, Appellant was sentenced in Horry County to thirty (30) years for Criminal Sexual conduct, First Degree on indictment # 2008-GS-2604686, from an offense occurring in 2004. This 2010 Sentence was to run concurrently with the 2005 Sentence that appellant was still serving. The Judge by Solicitor Lively's insistance allowed Jail credit for time served from October 2008. The Dept. calculated the appellant was entitled to 677 days from October 01, 2008 to August 09, 2010. Effectively, the judge calculated the Sentence start date to be October 01, 2008.

Appellant file Step 1 Grievance on August 15, 2018 arguing that credit should have been calculated from November 07, 2005. The Grievance was denied on August 24, 2018, but in SCDC's response by the Warden it clearly States that the appellents sentences are concurrent, but claims that Renaille only has 677 days Jail credit on his thirty (30) year sentence despite his confinement originally began on November 07, 2005. 677 days credit being for

less than the difference between August 09, 2010 and November 07, 2005. [Perversely, SCDC explains possible loss of good time credit due to failure to earn work credits or Possible RHU "Lock-up time". Pendilla has never been and never will be entitled by law to good time earned credits.] Appellant filed a Step 2 Grievance on August 30, 2018, contesting the same issues of original start-date of sentence and credits to be calculated from November 07, 2005. This grievance was denied October 25, 2018. In the agencies response they state the thirty (30) year sentence's start date as November 07, 2005, but then project a release date of March 26, 2034. SCDC correctly identified the sentence start date (despite the illegal start-date marked upon the sentence sheet by the trial court) but failed to properly calculate that a thirty (30) year sentence at 85% only requires twenty-five (25) years and six (6) months (this would place Pendilla's release date in 2030 not 2034).

Appellant promptly filed an appeal with the Administrative Law Court on November 16, 2018, raising the same issue of Jail-time credits. Appellant filed his brief on December 07, 2018, followed by SCDC filing record on appeal February 01, 2019 and its

brief on March 19, 2019. Nothing further was filed until the final order was filed July 24, 2019. Four (4) months to render a decision affirming the Dept's calculation for which appellant filed a response to the order August 06, 2019. to correct the err in the indictment number being false. corrupting the entire order. The respondent never corrected this error. The ALC did not respond or address this issue either. Appellant then timely filed with the South Carolina Court of Appeals on August 20, 2019. On March 09, 2022 the court of Appeals affirmed the lower courts decision in error of standing precedent. Appellant recieved this notice March 15, 2022. This Petition for rehearing follows;

Did the ALC and Court of Appeals err in finding there is substantial evidence to support their determination?

The court relies on Sanders V. SC. Dept. of Corr, 379 SC 411 (2008), ("In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence.") SC. Dept of Corr. V. Mitchell, 377 SC 256 (2008) ("The party challenging the governmental body's decision bears the burden of proving the decision is arbitrary.") also ("The burden is on the appellant to prove convincingly that an agency's decision is unsupported by evidence."). SC. code §1-23-610 (supp 2006) ("The review of the administrative Law judge's order must be confined to the record"). The Court of Appeals may reverse or modify the decision only if substantive rights of the appellant have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law. SC. code § 1-23-380 (A)(6)(2005) APA Standards must be applied when reviewing an agency's decision. Sections (a-f) all apply, as all are clearly violated by the courts decisions and prejudice the

substantive rights of the appellant. Pressly V. Lancaster Cnty. 343 SC 696 (2001). And SC. Const. Art IV § 9. Decisions of the Supreme Court shall bind the court of Appeals as precedents. State V. Cheeks 400 SC 329 (2012).

The statutory provisions that the courts use to affirm their decision and evidence on the record is insufficient to uphold their position. The court abused its discretion in allowing the respondent to file its brief out of time without "Good cause" shown and further relies on SC. code § 24-13-40 incorrectly as the specific elements of the instant case are unique.

Further, "The cardinal rule of statutory construction is to ascertain and effectuate the Legislative intent whenever possible." Perry V. Bullock 409 SC 137 (2014) (quoting, State V. Baucom 340 SC 339 (2000)). "Under the plain meaning rule, It is not the province of the court to change the meaning of a clear and unambiguous statute." SC Energy Users Comm. V. SC. Public service Comm'n, 388 SC 486, (2010) "Where the statute's language is plain, unambiguous, and conveys a clear, definate meaning, the rules of statutory interpretation are not needed and the court has no right

to impose another meaning." See also, State V. Johnson 396 SC. 182 (2011) (Same) "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." SC. prop & Cas. Ins Guar. Assn V. Brock, 410 SC. 361 (2014) (quoting McClanahan V. Richland Cnty. Council 350 SC. 433 (2002) When interpreting the meaning of a statute, Courts will, "avoid a reading that renders some words altogether redundant". Gustafson V. Alloyd, Inc 513 US. 561 (1995). Moreover, in interpreting a statute, the court must not look merely at a "particular clause in which a word may be used, but rather looks at the word and its meaning in conjuction with the purpose of the whole statute, and in light of the object and policy of the law"; SC. Coastal council V. SC. State ethics comm'n 306 SC. 41 (1991) (Emphasis added) (citing Spartanburg Sanitary Sewer Dist V. SC. Dept of Revenue 406 SC. 132 (2013) ("In interpreting a statute, 'words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation'". (alteration in original) (quoting Sloan V. Horton 371 SC. 495 (2007))); id. ("further, 'the statute must be read as a whole and sections which are part of the same general statutory

law must be construed together and each one given effect'" (emphasis added) (quoting SC. State Ports Auth. V. Jasper Cnty. 368 SC. 388 (2006)); id ("Accordingly, we 'read the statute as a whole' and 'should not concentrate on isolated phrases within the statute.'" (quoting CFRE, LLC V. Greenville Cnty. Assessor, 395 SC. 67 (2011)).

Interpreting SC. code § 24-13-40, Its important to point out that an "offense" as defined is an alleged crime having been committed, Thus an offense is pre-trial and before sentencing. A conviction is defined as the result of an offense and defines a post trial and perhaps pre sentencing and/or beyond. Therefore, a second offense must be a crime that occured after the commisson of a first offense. Whereas, a conviction occurs anytime after a guilt of an offense, A second conviction would occur after a prior conviction, Thusly, having been incarcerated in 2005, the State never stopped investigating the Appellant Putting him in a states of investigative detention and the following offenses issued in 2007 were a result of a continuous custody from Nov. 2005. Full credit, is mandatory for all pre trial jail credit. SC code § 24-13-40(C). And, The recidivist Statute

has always been intended for those who once convicted of a crime and sentenced. After release reoffends due to not being rehabilitated. Retrospective sentencing is an Ex post facto violation.

Did the Court of Appeals err in affirming the ALC's decision;

When the decision of the U.S. Supreme Court is in conflict, and

When the decision of the Court of Appeals violates constitutional prohibition against Ex postfacto clause, the 8th Amend Cerual and unusual punishment), and Equal protection of Rights?

The Court of Appeals failed to recognize the unusual circumstance of the timing aspects of this case, The original offense occured in 2005 and the "different" offense occured in 2004. The failure of the prosecution to charge and prosecute the 2004 offense until 2007 is a tactical delay and is a due process violation, State V. Lee 360 SC. 530 (2004) pre-indictment delay

Violates defendants - due process, Further, A cardinal rule of statutory construction is for the court to ascertain and effectuate the intent of the legislature, Branch V. City of Myrtle Beach, 340 SC. 405 (2000) and the court must apply these terms according to their literal meaning. Allen V. State 339 SC. 398 (2000). See also, State V. Hudson 336 SC. 237 (1999).

Whether the State uses "Second" or "different" in interpreting, SC. code § 24-13-40(2), the entire working;

> when a prisoner is serving a sentence for one offense and is awaiting trial and sentencing for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

Since the 2010 offense occured in 2004 and the defendant was continuously in custody from 2005, the time served from 2005 would **not** reduce his sentence for the **offense** committed in 2004. Therefore, Robinson V. State 329 SC. 65 (1998). A sentence to a term of imprisonment commences on the date the defendant is recieved

in custody [November 07, 2005]. Blakeney V. State 334 SC 86 (2000), "holding a prisoner serving time in jail awaiting trial and sentencing on an unrelated charge was entitled to credit for time served..." The cases the State uses to affirm their decision either do not apply in this case or are adverse to the State's position.

In, State V. Brown 426 SC 63 (2019) Defendant was entitled to credit for time served in civil commitment from 2006 till 2014 even though original charges had been dismissed in 2009 and No charges were pending during his confinement. Braxton V. SC Dept. of Corr, 430 SC 637 (2020), 24-13-40(c) the court shall have designated a specific time for commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, Full credit against the sentence must be given for time served prior to trial and sentencing. The Court of Appeals disagreed as to the reliance on 24-13-40 to affirm SCDC's refusal to award Braxton credit for time served, he was imprisoned

in Tennessee because that section applies to credit for time served prior to trial and sentencing and Braxton was imprisoned in Tn. after his trial and sentencing for his conviction in South Carolina, 24-13-40(C) provided for computation ... Full credit prior to trial and sentencing, further, a foreign Jurisdiction is without authority to modify or place conditions on a sentence. Therefore, if a second jurisdiction imposes on a prisoner a sentence to run concurrently with a previously imposed sentence, it is the responsibility of the second jurisdiction to effectuate its concurrent sentence and thus ensures the prisoner recieves credit for time served in both jurisdictions. To acheive this result, the Second Jurisdiction must transfer custody to the first Jurisdiction, or the prisoner may also recieve credit for time served in another jurisdiction by notifying SCDC that he is unable to personally submit to SC custody to commence the service of his sentences. In State V Robinson 329 SC. 65(1998), Robinson was out on appeal bond and still recieved credit on unrelated charges.

In Hayes V State 413 SC 553 (2015) the defendant recieved a "split sentence", The Court of Appeals held that; A defendant who recieved split sentences upon revocation of probation was entitled to credit for time

Served against reinstated sentence even where SC. code § 24-13-40(b) requires that any previously suspended sentence be treated as a new sentence in computation. Gates V. Wallace 278 SC. 214 (1982). The occurrence of the timing was progressive in Hayes, as opposed to appellant's case which was retrospective. This causes an as applied Ex post facto violation, which offends both State and federal constitutions. As the court has demonstrated elsewhere, a second offense is an offense that occurs **after release** from the first offense, or possibly **during the service** of the first offense. See Stek V. Gorden 356 SC. 143 (2003). Additional or multiple offenses are not second offenses for the purpose of statutory construction without directly implicating the eighth amendment. "The State may, indeed, make the drinking of one drop of liquor an offense to be punished by imprisonment, but it would be an unheard of cruelty if it should count the drops in a single glass and make thereby a thousand offenses..." O'Neil V. Vermont 144 US 323 (1892). Naturally, if the drinker returned to the glass after he was released from confinement, the **Second** or **different** offense would be plain. This is the obvious intent of the legislature in interpreting SC. Code § 24-13-40 pursuant to Recidivism.

Further, the SC. Supreme Court intends that concurrent sentence credit be fully concurrent, not

partially concurrent as illegally ordered by the General sessions court in Horry County. Further, if **consecutive** means that a sentence will begin service after the end of a currently served sentence, and **concurrent** means that a sentence will be served at the same time - this in general usage - then applying SC. code §24-13-40 only to prisoners currently confined to create a third, unnamed, category co-equal to **consecutive** and **concurrent**, but only applicable to prisoners, violates the Equal Protection clause of the Fourteenth Amendment.

Did the Court of Appeals err by ruling that Appellant abandoned his issue that Improper indictment numbers invalidated the ALC's Order and the court abused its discretion in this case?

The ruling of abandonment of this issue is an abuse of discretion. The specific question of invalidating the order was argued at the administrative Law court and the Appellant included it 'in The Record on Appeal [Exhibit J] his "Response to Order"

filed August 06, 2019 which the ALC never addressed or responded to, and which also preserves the arguement. An order issued on false or incorrect information must be objected to and cannot stand as legal ruling without first correcting the errors. Appellant Pointed to these errors by motion, which the court ignored and never corrected these errors. By the ALC not responding to the motion the court forfeited its ruling thereby invalidating the Courts order.

Furthermore, many other issues arose during the Appellants filings that create Equal Protection of Rights Violations that the Court failed to properly adjudicate, such as the respondent failing to show good cause, stating, "Due to an oversight", when filing respondents Initial Brief and Designation of Matter [Amended]. By the Court improperly allowing inadmissible filings it has allowed a grievous miscarriage of justice and violated Equal Protection of rights and prejudiced the Appellants due process. Appellant filed a Finely "Motion to Strike" [March 30, 2020] and "Reply to Response" [May 05, 2020] properly challenging decisions by the Court of Appeals. [Enclosed as supporting documents]. [Appellants Final Brief is enclosed for the courts convenience], As Appellant further Suggests all supporting documents that are enclosed as

arguments in this Petition for Rehearing. The decision that should have been rendered is for Gregory Penaille 312332. Appellant, Pro se

CONCLUSION

WHEREFORE, the Appellant respectfully requests the Court to reconsider its 09, of march, 2022 Opinion and rule in favor of Appellant. Who files the above Petition for Rehearing, Pro se, and prays this court finds sufficient substantive evidence to support Appellants issues to reverse the decisions of the Court of Appeals and the ALC's decision in affirming the agency's decision to deny Appellants grievance, address and rule on the issue of improper indictment numbers by overturning the courts "granting" of the Respondents "Motion to file out of time", thereby excluding respondents initial Brief. Decide on the merits of this case without the inadmissable evidence of respondents insufficient, untimely filings and Rule on all issues presented by the Appellant.

Date. March 29, 2022

Gregory Penaille 312332
Evans CI FUA 275
610 Hwy 9 west
Bennettsville, SC. 29512
Appellant, Pro Se

Sworn to and subscribed before me
this 29 day of March 2022
S S O
Notary Public of South Carolina
My Commission Expires 2/17/24

Exhibit J [17]

State of South Carolina
Administrative Law Court

Gregory Pendle, 312332 Appellant	Docket No. 18-ALJ-04-0547-AP Griev. No. LCI 0724-18
V.	
S.C. Dept. of Corr. Respondent	Response to Order

This Response comes Pursuant to order filed Oct. 24th, 2019. The order filed has a main clerical error which by its precident corrupts the Order as a whole. This comes by Rule 67. SCACR.

~~In~~ The order states in facts and Procedural history. an "indictment number 2010-GS-2604686". The actual indictment number is 2008-GS-2604686. When in actuality the proper indictment number should have been 2004-GS-2604686 because it was the year of the alleged offense. Pendle had already been incarcerated in 05' and was therefore under investigative detention on the indictment in question. The governing Statute SC code Ann

§24-13-40 section (2) which is in question plainly refers to offenses which occur "second" or subsequent to the first sentence imposed. Clearly in Pendlis instance the offense occured prior and therefore could not qualify for this section (2) of the Statute.

Therefore, the substential evidence does not support the departments calculations and shall be rewritten or ordered differently.

Date: Aug. 6th, 2019

Gregory Pendlis, 312332

The South Carolina Court of Appeals

Appeal from the Administrative law Court

Hon. H.W. Funderburk, Jr.

Case No. 2019-001410

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

[INITIAL] REPLY BRIEF/ MOTION TO STRIKE

Appellant requests that this court review its order from March `12, 2020. In which this order states, [Appellant has filed a "motion to amend and file 'letter to clerk' as motion for default judgement/ motion to compel response of previous filings." The request for default judgement is denied.]

In this statement the court does not stipulate whether "motion to compel response of previous filings", was granted or denied. As such by this court's order, appellant moves to file **Motion to Strike** respondent's Initial Brief and amended Designation of Matter ("DOM"). 1) Respondents brief for failing to file timely and for failing to show "good cause" for filing out of time. 2) Respondent`s amended DOM for failing to file by motion making the DOM filed out of time. Furthermore, the respondent amended her DOM without requesting by motion which is in violation of SCRAP 240(g) resulting in the abandonment of the motion or failing to file timely.

Appellant reargues " Notice to Court" originally filed Nov. 27th, 2020. As evidence in support of Motion to Strike.

In the above entitled case the appellant addresses the court by way of motion that pursuant to Rule 208 (2) SCACR. Brief of Respondent, within (30) thirty days after service of appellants brief, respondent shall serve one copy of his brief on all parties to the appeal...

Appellants` Initial brief was served and filed with certificate of service October 16th, 2019. By affirmation of Respondent, respondent's Initial brief was due to be served and filed on November 16th, 2019. Respondent's request to file out of time states respondent failed to timely file "due to an oversight". This in no form can be considered as (good cause) shown. The respondent is represented by a professional attorney and should be held to that professional standard. And as such, appellant states as follows:

"Pursuant to Rule 208 (a)(4), upon failure of respondent to timely file a brief, the appellate court [may take such action as it deems proper]. The South Carolina Courts have recognized the failure of a respondent to file a brief could justify a reversal. Turner v. Santee Cement Carriers, Inc, 272 S.C. 91, 96 282 S.E.2d 858,860 (1981); Robinson v. Hassiotis, 364 S.C. 92, 93n2 610 S.E.2d 858n2. (ct.app2005). noting the respondent had not filed a brief and this court may take such action as it deems proper, including reversal.

Furthermore, when respondent does not file a brief, this court has found it proper to address the issues presented by the appellant, Durham v. United Companies, fin. Corp, 326 S.C. 403, 404, 483 S.E.2d 786 (ct. app.1997);Wierszewski v. Tokarick, 308 S.C. 441, 444n2., 418S.E.2d557, 559n2. (ct. app1992) . stating where the respondent failed to file a brief [it was proper to reverse on the points presented rather than to search the record for reasons to affirm].

As it is against court rules to address issues presented in respondents initial brief in this filing, appellant merely states respondents arguments are without merit.

Also, appellant recognizes to this court the redundancy as to which the respondent has argued through this cases progression. Facts remain that previous decisions to appellants substantive rights have been prejudiced by the findings, conclusions, and decisions in violation of S.C. code Ann § 1–23–610(B)(a-f). And under Equal Protection of the U.S. and State constitutions had appellant failed to timely file his initial brief [Pro-Se] this court would have dismissed his appeal.

Appellant does not understand this courts motive as to actions granted and/or denied in the March 12th, 2020 order. As to appellants layman understanding by granting respondent's continued violations of court rules and denying appellants request for respondent to follow court rules prejudices appellants Due process and Fundamental Fairness Doctrines.

Therefore, appellant prays this court reverses the decision of the administrative law judge and requires the Dept. of Correction to recalculate Pencille's sentence from Nov. 5th, 2005 and remove added sentence conditions."

Date: March 30, 2020

Gregory Pencille, #312332
Appellant, Pro Se

Certificate of service

I hereby certify that Gregory Pencille on the 30 day of March, 2020. In Bennettsville S.C. Served Initial reply brief/ motion to strike on all parties by depositing the same in the U.S. mail, postage prepaid or in the institutions mailroom and addressed as follows;

Jenny A. Kitchings, clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

S.C. General Counsel, SCDC
P.O. Box 21787
Columbia S.C. 29221

Gregory Pencille, #312332
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512

Date: March 30, 2020

SWORN to and subscribed before me this 30th
Day of March, 2020
Sandra Durham (L.S.)
Notary Public
My Commission Expires: 2/17/24

The South Carolina Court of Appeals

Appeal from the Administrative law Court

Hon. H.W. Funderburk, Jr.

Case No. 2019-001410

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

REPLY TO RESONSE FROM THIS COURT

Comes now, Gregory Pencille, #312332, ~~we~~ who AP duly swears and deposes the following; Appellant Pencille requests explanation of the letter dated April, 23rd, 2020 and received by appellant on April 28th, 2020. In which the court states that no action will be taken on the appellant`s "Motion to strike the respondent`s Initial brief and Amended Designation of matter" filed on March 1st, 2020 Pursuant to rule 221(c) SCACR. Rule 221(c) clearly states that it pertains to petitions for rehearing. Appellant clearly points out the prejudice of granting the brief and designation filings. And this court only responded to part of appellant`s filing. By the court not addressing the original responses of the appellant from "**way back**" this court has acted in a prejudicial manner and has voided justice. The court is acting outside the scope of the judicial system in this matter and ruling on the matter as a whole in the favor of the appellant is the only way to bring this case back inside its bounds of the law. By the order filed on March 12th, 2020 in which the court allowed illegal and prejudicial filings of the respondent`s and allowing the appellant to file a reply brief it allowed the previous briefs to again be heard and properly be

ruled on but also allowed the motion to strike to be timely filed and this court to "**take action**" on the motion.

Appellant **does not** understand 1) why the court would use a rule that does not apply to the situation, rule 12(f) SCRCP motion to strike is plainly **not** a motion for rehearing. 2) even if rule 221(c) did apply "which it does not", the action this court would take on the motion would have the effect of dismissing or finally deciding a party's appeal. Respondent would not have admissible evidence and this court would decide the case based on the appellant's filings alone as is just.

The only reasoning appellant can arrive at ~~if~~ is this court has abused its discretion in this matter. An abuse of discretion occurs when the conclusions of the court are either controlled by an error of law or are based on unsupported factual conclusions Belle Hall Plantation Homowner's Association, Inc V. Murray, 419 S.C. 605, 799 S.E.2d 310. An error of law by the court is by definition an abuse of discretion, Gannett Co., Inc v. Clark const. Group, Inc.286 F3d 737 (2002). A court's ruling on the admissibility of evidence (or properly filed motions and petitions) will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice. State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (2004). In which both an abuse of discretion and legal error has occurred in this case.

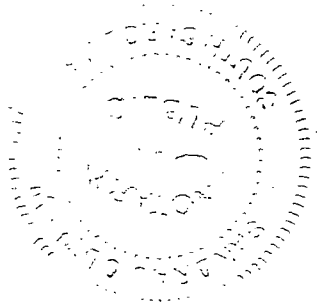
As it stands the appellant does not know where or at what point this case is at and would like guidance as to the next proper filing.

Appellant requests this court take action on previous proper and timely filed motion.

Gregory Pencille, #312332
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512
Appellant, Pro se

Cc: Kensey Evans, Esquire

Date: May 15, 2020



SWORN to and subscribed before me this 7th
Day of May, 2020
S. Outlaw (L.S.)
Notary Public
My Commission Expires: 2/17/24

Certificate of service

I hereby certify that Gregory Pencille on the 5th day of May, 2020. In Bennettsville S.C. Served reply to response of this court on all parties by depositing the same in the U.S. mail, postage prepaid or in the institutions mailroom and addressed as follows;

Jenny A. Kitchings, clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

S.C. General Counsel, SCDC
P.O. Box 21787
Columbia S.C. 29221

Gregory Pencille, #31233
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512

South Carolina Court of Appeals

Appeal from Administrative Law Court

Hon. H. W. Funderburk Jr.

Appeal case No. 2019-001410

Gregory Pencille, 312332, Appellant

v.

S.C. Dept. of Corrections, Respondent

FINAL BRIEF

Gregory Pencille 312332

Evans CI F4A 275

610 Hwy 9 west

Bennettsville, SC 29512

Appellant, Pro Se

CASE INDEX

AUTHORITY INDEX

ISSUE ON APPEAL

Did the South Carolina Administrative Law court improperly affirm the Department of Corrections sentence calculation of Appellants Pencille Jail credit?

Where the order issued by the Administrative Law Court improperly indicates an indictment number [2010-GS-26-04666] twice, [Exhibit A, pl, 3] which is not an actual indictment number. Does this error invalidate the ALC's order in it's entirety?

STATEMENT OF THE CASE

On November 7th, 2005, Appellant was sentenced in Horry County to twelve (12) years for kidnapping on indictment number 2005-GS-2054. [Exhibit B, p6]

On August 9th, 2010, Appellant was sentenced in Horry County to thirty (30) years for Criminal Sexual Conduct, first degree on indictment number 2009-GS-2604686 [Exhibit C, p7] from a case allegedly occurring in 2004. This sentence was to run concurrently with the 2005 sentence for kidnapping that appellant was still serving, However,

the judge along with Solicitor Lively's insistance allowed jail credit for time served from October 2008. The Dept. calculated the appellant was entitled to 677 days for Oct. 1st, 2008 to August 9th 2010. Effectively, the judge calculated the sentence start date to be October 1st, 2008.

Appellant filed Step 1 Grievance on August 15th 2018 [Exhibit D, p8-9] arguing that credit should have been calculated from November 7th, 2005. The Grievance was denied on August 24th, 2018 but in SCDC's response by the Warden, it clearly states that the appellant's sentences are concurrent, but claims that Pencille only had 677 days jail credit on his thirty (30) year sentence despite that his confinement originally began on Nov. 7th 2005. 677 days credit is clearly far less days than the difference between August 9th, 2010 commitment on CSC 1st and the original Nov. 7th, 2005 commitment. [Perversly, SCDC explains possible loss of good time credit due to failure to earn work credits or possible RHU lockup time, Pencille has never been or never will be entitled by law to good time earned credits]. Appellant filed Step 2 Grievance on August 30th, 2018 [Exhibit E, p10-11] contesting the same issue of original start date of sentence and credits to be calculated from

Nov. 7, 2005. This Grievance was denied October 25th, 2018 and in the agencies response stated the thirty (30) year sentence with the start date of Nov. 7th 2005, but then projected a release date of March 26th, 2034. In this case SCDC correctly identified the sentence start date (despite the illegal start date marked upon the sentencing sheet by the trial court) but failed to properly calculate that a thirty (30) year sentence at 85% only required 25 years and 6 months. (That would obviously place Pericles release date in 2030 not 2034).

Appellant promptly filed an appeal with the Administrative Law Court on Nov. 16th, 2018. [Exhibit H, p12] raising the same issue of jail time credits. Appellant filed his brief on Dec. 7th 2018 [Exhibit I, p13-16] followed by SCDC filing record on appeal Feb 1st, 2019 and his brief on March 19th, 2019. Nothing further was filed until final order was filed July 24th 2019, 4 months to render a decision affirming the Depts calculation for which appellant filed a response to the order Aug 6th 2019 [Exhibit J, p17-18] to correct the error in the order of the indictment number being false, corrupting the entire order. The ALC did not respond or address this issue; Appellant then timely filed with the SC Court of Appeals on August 20th, 2019.

ARGUEMENT

Where Appellant argued that SCDC improperly constructed and computed Pencilles concurrent thirty (30) year commitment for CSC 1st sentenced in 2010, indicted in 2008, issued warrant in 2007. When Pencille had been in custody continually from 2005 (upon the face of the Sentencing sheet [Exhibit C, p 7] the trial court ordered Pencille to begin service of his concurrent sentence in 2008 but ordered in the court room to be served concurrant with the charge currently serving [Plea transcript, P. 25, Ln 19-20]

> Court: ... I'm going to run that concurrent with the sentence that you are presently serving. I'll give you credit for the time you were charged with this, okay? ....

but this was in violation of SC code Ann § 24-13-40 that requires mandatory credit for time served. The CSC 1st for which Pencille was sentenced in 2010 was allegedly committed in 2004 - plainly prior to his arrest in 2005).

If SCDC is only an administer for calculating an inmates sentence and has No sentencing authority, Tant v. SC Doc, 408 SC 334, 759 SE 2d 398, 399 (2014). Then how does a "Court -

ordered" ATU and 44-48-30 SVPA statute show added to Penelle's SCDC institutional record [Exhibit K, p 19-22] where it does not appear anywhere on the face of the sentencing sheet [Exhibit C, p 7]?

The concurrent sentence is the legal standing for which the judge imparts the sentence structure for penelled sentance, but "Since 2008" is an illegal enhancement that the judge added to the sentence sheet [Exhibit C, p 7] statute § 24-13-40 (c)(2) can not apply due to the sentence not being a second offense.

In the ALC's final order the respondant argued round-a-bout issues and only one pertaining to the issue of sentence stand date which derives from SC Code Ann § 24-13-40(2), which respondant mis-applies its meaning. Allen V. State 339 SC 398, 529 SE 2d 541 (2000). where the terms of a statute are clear, The court must apply these terms according to their literal meaning." 2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentencing for a Second offense in which case he shall not recieve credit for time served prior to trial in a reduction of his sentence for the Second offense [Emphasis added]. The use of the word "Second": (websters dictionary (0th Ed) NEXT to the first in place or time." An offense which occured prior to the first offense

could not be a second offense. If it is, it becomes an illegal Ex post facto enhancement violating Art 1 § 10, cl 1 of the U.S. and State constitution and implicates an 8th Amendment issue. The respondant changes the word "second" to "different" to explain the meaning of § 24-13-40(2) statute [Exhibit A, p 3] which changes it's interpretation Paschel V. State election comm'n 317 SC 434, 454 SE 2d 840 (1995); The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand it's scope.

SC code Ann § 1-23-600(E) & and § 1-24-380(A)(6) places descretion within the ALC's jurisdiction. See AL-Shabazz V. State 338 SC 354, 527 SE 2d 742 (2000). SC Code Ann § 1-23-380(A)(5) a-f all apply in this incorrect indictment number twice, while the issuer of the court ordered ATV program and SVPA addition to Pencilled sentencing that are not on the Sentencing sheet and the illegaly added "since 2008" back date that appear on the sentencing sheet are prima facie is reversal of the ALC's decision. The Appellants ALC initial brief [Enclosed for this courts convienance, Exhibit I, p 13-16] should be reviewed de novo.

CONCLUSION

Appellant request and prays that for the above reasons this court reviews the ALC's decision to affirm the SCDOC ruling and that this court rule that the Administrative Law Judge order that SCDOC classification recalculate Pencille's sentence start date to November 07th, 2005 and recalculate Pencille's release date to 2030.

CERTIFICATE OF APPELLANT PRO SE

The undersigned certifies that this final brief complies with Rule 210(6), SCALR.

Date July 28, 2020

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Sworn to and subscribed before me
this 28th day of July
(Notary Public of South Carolina)
My Commission Expires 2/17/24

CERTIFICATE OF SERVICE

I hereby certify that I, Gregory Penville, on the 28 day of July, 2020 in Bennettsville, South Carolina served a copy of the Appellants final Brief on all parties in this matter by depositing the same in the US mail, postage paid, or in the institutions mail room and addressed as follows:

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I herby certify that I, Gregory Perdue Appellant, Prose, on the 29 day of March, 2022 in Bennettsville, South Carolina served a copy of Appellants Petition for Rehearing on all parties in this matter by depositing the same in the U.S. mail, postage paid, or in the institutions mailroom and addressed as follows;

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