

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III

Opinion No. 4897 (S.C. Ct. App. filed Oct. 26, 2011)

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S.C. Supreme Court

David Ray Tant.....Respondent,

v.

South Carolina Department of Corrections.....Petitioner.

REPLY BRIEF OF PETITIONER

May 13, 2013

South Carolina Department of Corrections

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ARGUMENT

I. THE DEPARTMENT'S FINAL DECISION APPROPRIATELY IMPLEMENTED THE EXPRESSED INTENT OF THE SENTENCING JUDGE.

In his arguments supporting the Court of Appeals decision, respondent disregards the clear intent of the sentencing judge, unambiguously expressed during the sentencing hearing.

Throughout his brief, respondent incorrectly alleges that the Department of Corrections increased his sentence through an internal decision. In making this assertion, respondent ignores the fact that the sentencing judge made a clear pronouncement of his intent at the plea hearing. During the pronouncement of the sentence, the sentencing judge specifically addressed the issue of whether the animal fighting sentences were to run consecutively:

In 2004-3473, 2004-3474, 2004-3475, 2004-3476, those additional four indictments for which he has been convicted of animal fighting, are consecutive to each other and consecutive to 2004-5829. Is that clear?

(R.p.92, lines 1-6). Respondent's counsel neither objected nor asked any questions in response to the sentencing judge's order.

Under South Carolina law, the sentencing judge's intent dictates the implementation of the sentence. See Tilley v. State, 334 S.C. 24, 29, 511 S.E.2d 689, 692 (1999) (holding the sequence of sentences to be served should be modified to comport with the sentencing judge's intent); Richards v. Crump, 260 S.C. 133, 137, 194 S.E.2d 575, 576 (1973) ("The intent of the judge, within his authority, must be carried out."); State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971) ("The intent of the trial judge is controlling."); Polk v. Manning, 224 S.C. 467, 471, 79 S.E.2d 875, 876 (1954) ("In determining whether several sentences are to run consecutively or concurrently, they should reasonably be construed in accordance with the intent of the trial court, if the language used makes the intent clear.") (emphasis added); but see Major

v. S.C. Dep't of Probation, Parole & Pardon Svcs., 384 S.C. 457, 467, 682 S.E.2d 795, 800 (2009) (explaining the sentencing judge's intent is limited under some circumstances by the doctrine of separation of powers).

In the case at hand, the sentencing judge's intent was clearly expressed at the sentencing hearing, and as outlined more fully in petitioner's principal brief, continuously thereafter. Both respondent's argument and the Court of Appeals decision erred by not following the established principle that a criminal sentence should be interpreted as the sentencing judge intended.

II. THE ADMINISTRATIVE LAW COURT'S OCTOBER 27, 2008 ORDER DID NOT ESTABLISH THE LAW OF THE CASE.

In his brief, respondent incorrectly asserts that the Administrative Law Court's (ALC) October 27, 2008 Order established the law of the case. (Resp.Br.p.6). That order did not establish the law of the case because it was not immediately appealable.

Generally, an unappealed ruling becomes the law of the case. Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010). However, when an order of remand is not directly appealable, the rulings in such an order do not become the law of the case since no appeal would have been possible. See Wise v. Wise, 394 S.C. 591, 602, 716 S.E.2d 117, 123 (Ct. App. 2011) (finding that because an appeal of a circuit court's order of remand in a workers' compensation case would have been interlocutory, a ruling in that order did not become the law of the case); In re Rabens, 386 S.C. 469, 473, 688 S.E.2d 602, 604 (Ct. App. 2010).

An order of the ALC remanding a case for additional proceedings before an administrative agency is not directly appealable. See Compton v. S.C. Dep't of Probation, Parole & Pardon Svcs., 385 S.C. 476, 477-78, 685 S.E.2d 175, 176 (2009); Leviner v. Sonoco Products

Co., 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000).

In his brief, respondent incorrectly claims the ALC's October 27, 2008 Order established the law of the case in excluding from consideration a letter from the sentencing judge explaining his intent for respondent's animal fighting sentences to run consecutively to each other.¹ (R.p.23, 235). Because the ALC's October 27, 2008 Order remanded the case for additional proceedings through the Department of Corrections' grievance process, that Order was not immediately appealable. As a result, rulings contained in that order did not become the law of the case. Accordingly, nothing in that Order precludes this Court from considering the contents of the sentencing judge's letter.

III. THE REMAINING ISSUES ADVANCED BY RESPONDENT DO NOT PROVIDE AN ALTERNATIVE BASIS FOR UPHOLDING THE DECISION OF THE COURT OF APPEALS.

In answer to respondent's reference to the unaddressed arguments contained in his brief to the Court of Appeals, the Department of Corrections incorporates the responses to those arguments contained in its brief filed in that Court. As fully explained in the Department's brief to the Court of Appeals, the Department of Corrections properly determined implemented respondent's sentence in accordance with the sentencing judge's intent.

CONCLUSION

WHEREFORE, for the foregoing reasons, SCDC respectfully requests the Court reverse the decision of the Court of Appeals.

Respectfully submitted,

¹ Respondent, however, does not appear to accept application of the doctrine of the law of the case with respect to the ALC's ruling in the same order requiring consideration of the transcript of the sentencing hearing. (R.p.23).

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Brief of Petitioner by depositing a copy of same in the United States Mail, postage prepaid, on May 13, 2013, addressed to the following recipients:

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