THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Hon H.W. Funderburk Jr. Administrative Judge

Opinion No. 2022-UP-099 (S.C. Ct. App filed march 09, 2022)

Gregory Perrille 312332, Petitioner

V.

SC. Dept of Corrections Respondent.

PETITION FOR WRIT OF CERTIORARI

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INDEX

Certificate of Petitioner ii

Questions Presented ii

Statement of the Case 1

Arguements

I. The ALC and Court of Appeals erroed in finding there was substantial evidence to support its determination? 4

II. The Court of Appeals erroed 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 post facto clause, 8th Amend (Cruel and unusal punishment) and equal protection of rights? 8

III. The Court of Appeals erroed by ruling that the appellant abandoned his issue that improper indictment numbers invalidated the ALC's Order and The Court abused its descretion in this Case. 13

Conclusion 15

CERTIFICATE OF PETITIONER

Petitioner certifies that the Petition for rehearing was made and not ruled on by the court of Appeals.

QUESTIONS PRESENTED

1. Did the ALC and Court of Appeals err in finding there was substantial evidence to support its determination?
2. Did the Court of Appeals err in affirming the ALC's decision's

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 post facto clause, 8th Amend (Cruel and usual punishment) and equal protection of Rights?

3. Did the Court of Appeals err by ruling that the appellant abandoned his issue that improper indictment numbers invalidated the ALC's Order and the Court abused its discretion in this Case?

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 filed 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". Pernille 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 Pernilles 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 Gail-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 on July 24, 2019. Four (4) months to render a decision affirming the Depts calculation for which appellant filed a response to the order August 06, 2019 to correct the error 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 order on March 15, 2022, Petitioner then filed a Petition for rehearing on March 29, 2022. On March 29, 2022 Petitioner recieved the Courts Remittitur which was mailed prematurely. Petitioner recieved notice on April 08, 2022 that the Court of Appeals would not act on Petitioner's, Petition for Rehearing. Petitioner filed an Explanation of timing with the Court of appeals but has yet to hear a response. Petitioner files this Petition for Writ of certiorari to preserve filing. Petitioner will also request it placed in Abayence.

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. V § 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) "When 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 & Gas. Ins Guar. Assn V. Broch, 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 U.S. 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 conjunction 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, It's 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 (cruel 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 received

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 molify 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 recieves 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 State 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 concurrant 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 Timely "Motion to Strike" [March 30, 2020] and "Reply to Response" [May 05, 2020] properly challenging decisions by the Court of Appeals. [Included as supporting documents]. [Appellants Final Brief is included for the courts convenience], As Appellant further Suggests all supporting documents that are included as

arguements in this Petition for Writ of Certiorari. The decision should be rendered for GREGORY PENCILLE. #312332, Petitioner, Pro Se.

CONCLUSION

WHEREFORE, the Petitioner pray's this Court reverse the Court of Appeals decision rendered march 09, 2022. Petitioner further pray's this court finds sufficient substantive evidence to support Petitioners 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 Respondants "motion to file out of time"; thereby excluding respondants intial Brief, Decide on the merits of this case without the inadmissable evidence of the respondants insufficient, untimely filings and Rule on all issues presented by the Petitioner.

May 05, 2022

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[redacted] May 2022

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