

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn C. Matthews

Case No. Docket No.: 11-ALJ-04-0871-AP

Joshua Gallishaw, # 251362.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

February 15, 2013

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE?**

- II. WAS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Court pursuant to the appeal of Joshua Gallishaw (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). In this appeal, appellant argues he is not being awarded the appropriate amount of pre-conviction jail time credit toward completion of his eighteen-year sentence for voluntary manslaughter.

On February 23, 1998, appellant was arrested for voluntary manslaughter. (R.p.4). On June 1, 1998, after 98 days in jail, appellant’s youthful offender act (YOA) parole related to other charges was revoked. (R.p.2). Subsequently, on June 30, 1999 appellant completed service of his YOA sentence, and he was detained in the county detention center while awaiting disposition of pending charges. (R.p.5). On March 8, 2000, 252 days after he completed service of his YOA sentence, appellant plead guilty to a separate charge of distribution of crack cocaine, second offense. (R.p.6). Following a period of incarceration at SCDC, appellant was convicted and sentenced on the voluntary manslaughter charge on November 15, 2000. (R.p.8).

On August 17, 2010, appellant filed a Step-One grievance complaining SCDC was inaccurately calculating his release date. Specifically, he alleged that he was not being properly credited for pre-conviction jail time. (R.p.1). SCDC investigated and denied the grievance, explaining that appellant was not entitled to pre-conviction jail time credit for the period from June 1, 1998 to June 30, 1999 because appellant was in SCDC custody serving time on a separate charge. (R.pp.1-2). Appellant filed a Step-Two grievance on October 5, 2010. This grievance was also investigated and denied.

Appellant then appealed to the Administrative Law Court (ALC). On February 27, 2012, Administrative Law Judge Carolyn C. Matthews issued an Order affirming SCDC's decision in this matter. (R.pp.13-15). Judge Matthews ruled appellant was not entitled to credit on his voluntary manslaughter sentence for the periods while he was incarcerated for his YOA parole violation and for his conviction for distribution of crack cocaine because, pursuant to S.C. Code Ann. § 24-13-40, "credit for time served prior to trial and sentencing shall not be given . . . when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense[.]" (R.p.15).

Appellant has now appealed the ALC's decision. For the reasons that follow, Respondent respectfully requests this Court affirm the ALC's decision in this matter.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

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.

See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

ARGUMENT AND CITATION OF AUTHORITY

I. THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE.

The ALC correctly affirmed SCDC's final agency decision because appellant's sentence has been correctly calculated. Appellant challenges his pre-conviction credit for his current eighteen-year sentences for voluntary manslaughter. Contrary to appellant's argument, his pre-conviction credit has been correctly calculated.

On February 23, 1998, appellant was arrested for a voluntary manslaughter charge. (R.p.4). On June 1, 1998, after 98 days in jail, appellant's YOA parole related to other charges was revoked, and subsequently he was sent to the custody of SCDC. (R.p.2). On June 30, 1999, appellant completed service of his YOA sentence, and he was detained in the county detention center while awaiting disposition of pending charges. (R.p.4). On March 8, 2000, 252 days after completion of his YOA sentence, appellant plead guilty to a separate charge of distribution of crack cocaine, second offense. (R.p.6). Following a period of incarceration at SCDC, appellant was convicted of the current charge of voluntary manslaughter on November 15, 2000. (R.p.8).

As the response to the Step One grievance explained, appellant has been given credit on his voluntary manslaughter sentence for pre-conviction jail time from February 23, 1998 to June 1, 1998 (98 days) and from June 30, 1999 to March 8, 2000 (252 days) for a total of 350 days of jail time credit. (R.p.4).

Appellant claims he should be given credit towards his voluntary manslaughter sentence for the periods while he was incarcerated for his YOA parole violation and for distribution of crack cocaine. Contrary to appellant's argument, appellant is not entitled to the credit he seeks. An inmate does not accrued pre-conviction credit if he is already serving a sentence for another offense. See S.C. Code Ann. § 24-13-40 (“[W]hen the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense . . . he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.”) Therefore, pursuant to applicable law, appellant is not entitled to jail time credit on his sentence for voluntary manslaughter for periods he was serving a sentence for YOA parole violations or for another criminal conviction. Accordingly, SCDC has correctly calculated appellant's sentence.

II. RESPONDENT'S FINAL AGENCY DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 396, 489 S.E.2d 219, 220 (Ct. App. 1997).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to

justify its action. Laws v. Richland County Sch. Dist. No. 1, 2270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm'n, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998).

The record conclusively establishes that the "substantial evidence on the whole record" supports the SCDC's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Public Svc. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (S.C. 1998). As shown above, Appellant has not met this burden and his claim should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, SCDC respectfully requests that the ALC's decision be affirmed.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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February 15, 2013

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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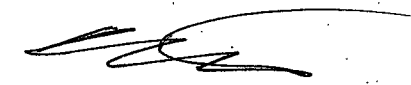
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on February 15, 2013, addressed as follows:

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