S.C. Court of Appeals

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SC Court of Appeals

In re: Michael McCraw

Appellant Case No: 2022-000890

Trial Court Case No: 2020ALJ040131AP

Appellant recently recieved an order from the court stating that the appellant failed to file a copy of the order under appeal and the application fee. The Appellant wishes to inform the court that he is a Prose litigant at a designated facility without access to a law library and is proceeding indigently. Additionally, Appellant is only seeking enforcement of an prior judgement of the Court of Appeals dealing with "no parole offenses" 44-53-375(B). Appellant respectfully request that the Court takes these factors into consideration. Enclosed is a copy of the order from A.J.C.

Respectfully submitted

Michael McCraw
#358041

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael W. McCraw, #358041, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No. 20-ALJ-04-0131-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Michael W. McCraw (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant appeals the Department's denial of his Step 2 Grievance, in which the Department concluded that Appellant was required to serve eighty-five (85) percent of his sentence before being eligible for early release, discharge, or community supervision. For the reasons set forth below, the Department's decision is affirmed. [1]

BACKGROUND

On October 10, 2013, Appellant received a thirty-year prison sentence for his third [2] offense of possession with intent to distribute and/or manufacture methamphetamine or other

[1] Appellant filed his appeal with the ALC on or about March 4, 2020. The Department filed the Record on Appeal (Record) on May 20, 2020. Thereafter, on June 25, 2020, the Department filed a Motion to Dismiss because Appellant had not filed an appellate brief. Appellant timely responded to the Department's Motion to Dismiss and then filed his appellate brief with the Court on July 6, 2020. Thereafter, on November 20, 2020, the Appellant filed a motion requesting that the case be resolved in his favor because the Department had not filed its appellate brief. By Order dated February 5, 2021, the Court denied the Department's Motion to Dismiss, accepted the Appellant's brief, denied Appellant's motion to resolve the case in his favor and fixed the time for the Department to file its brief. On March 3, 2021, the Department filed its appellate brief along with a Motion to Supplement Record in which it sought to add an internal Department worksheet regarding Appellant's sentence. The Court granted the Motion to Supplement on May 18, 2021. Appellant then moved to supplement the Record with an additional document. In response, the Court issued an order dated August 18, 2021 requiring the Department to supplement the Record with a copy of the sentencing sheet from Appellant's 2008 conviction. The Department provided the sentencing sheet on September 7, 2021.

[2] The Record indicates that on February 13, 2008, Appellant pled guilty to PWID methamphetamine, first offense, under subsection 44-53-375 of the South Carolina Code (Supp. 2007), and was sentenced to ninety days in a county detention center rather than SCDC custody. The Record does not include sentencing

controlled substances (PWID) under subsection 44-53-375(B)(3) of the South Carolina Code. Appellant began serving his sentence on February 16, 2013, which reflects credit Appellant received for time served prior to entering SCDC custody. On November 26, 2018, Appellant was re-sentenced from thirty years' incarceration to twelve years due to a partial grant of post-conviction relief. The Department determined Appellant's third PWID offense constituted a "no parole" offense pursuant to subsection 24-13-100 of the South Carolina Code (2007), a classification which requires the offender to serve eighty-five (85) percent of the actual term of the sentence imposed before becoming eligible for early release, discharge, or community supervision. S.C. Code Ann. § 24-13-150(A). The statute requires the Department to calculate the eighty-five percent maxout date of such sentences without application of any sentence-related credits earned, such as work, education, or good conduct credits the inmate accrued during incarceration. *Id.* The Department calculated Appellant's projected maxout date as April 27, 2023 [3] after applying this eighty-five percent requirement to his twelve-year sentence based on his February 16, 2013 start date.

On July 11, 2019, Appellant filed a Step One Grievance alleging that the Department was detaining him illegally by not applying his accrued work, education, or good conduct credits towards his current maxout date. Appellant requested that the Department recalculate his maxout date to account for any sentence-reduction credits he earned while incarcerated. Appellant further cited to the South Carolina Court of Appeals' decision in *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) in claiming that his third PWID offense was exempt from the eighty-five percent requirement pursuant to the South Carolina legislature's 2010 passage of the Omnibus Crime Reduction and Sentencing Reform Act.

The Department investigated and subsequently denied Appellant's Step 1 and Step 2 Grievance upon determining that it had properly calculated Appellant's sentence. The Department explained that Appellant's third methamphetamine distribution sentence under subsection 44-53-375(B) constituted a "no parole" offense, and as such, the Truth-In-Sentencing Act required Appellant to complete at least eighty-five percent of his sentence before any earned prison credits

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sheet for Appellant's second narcotic sentence. However, as is explained below, inclusion of this information in the Record is unnecessary as it would not affect the outcome of this case.

[3] The Department inadvertently listed Appellant's maxout date as April 27, 2013, rather than 2023, in its response to Appellant's Step 2 Grievance.

could be applied towards his maxout date. The Department noted that although Appellant was earning work and education credits while incarcerated, these credits could not be applied towards Appellant's sentence calculation to establish an earlier release date until the eighty-five percent requirement was met.

ISSUE ON APPEAL

Did the Department correctly conclude that Appellant is required to serve at least eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision pursuant to section 24-13-150(A) of the South Carolina Code?

STANDARD OF REVIEW

This Court's jurisdiction to hear inmate grievance matters is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole, and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). Under the *Al-Shabazz* line of cases, the court's jurisdiction over inmate grievances is limited to matters related to a state-created liberty or property interest. *Al-Shabazz*, 338 S.C. at 368–69, 527 S.E.2d at 749–50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Specifically, the South Carolina Supreme Court has stated that summary dismissal of an otherwise properly perfected inmate appeal "may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." *Slezak v. S.C. Dep't of Corrs.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. *See also* S.C. Code Ann. § 1-23-600(E) (Supp. 2021) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Subsection 1-23-380(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2021)

"Substantial evidence" is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action. *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Zaw v. Richland County. Sch. Dist. No. 1*, 270 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 finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353,461 S.E.2d 388, 391 (1995). Accordingly, a reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence as a whole.

DISCUSSION

South Carolina defines "no parole offenses" as class A, B, or C felonies carrying a maximum prison term of twenty years or more. S.C. Code Ann. § 24-13-100 (2007); *see also* § 16-1-90 (Supp. 2021) (outlining class A, B, or C felony offenses). Inmates convicted of "no parole" offenses are required to serve eighty-five percent of their sentence before becoming eligible for early release, discharge, or community supervision. § 24-13-150(A) (Supp. 2021). Such eligibility determinations are made at the discretion of the South Carolina Department of Probation, Parole, and Pardon Services. *See* § 24-21-610 (2007) ("In all cases cognizable under this chapter the Board *may*...") (emphasis added).

A third PWID offense under subsection 44-53-375(B)(3) constitutes a class A felony because the offense carries a maximum prison sentence of thirty years. *See* S.C. Code Ann. § 16-1-20(A)(1)(listing the requisite penalty for class A felonies as not more than thirty years). Accordingly, a third PWID offense falls under the classification of a "no parole" offense as it is a "class A, B, or C felon[y] carrying a maximum prison term of twenty years or more." S.C. Code Ann. § 24-13-100 (2007).

In 2010, the South Carolina Legislature amended the penalties for certain drug offenses through the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the

Act). As a result of these amendments, some offenses previously ineligible for probation, parole, early release credits, and other prison programs became eligible for such treatments. The Act added the following language regarding penalties for PWID of methamphetamine, cocaine base, and other controlled substances under subsection 44-53-375(B):

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. **Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.**

2010 Act No. 273, sec. 37, eff. June 2, 2010 (emphasis added).

The 2010 amendments to subsection 44-53-375(B) were in effect at the time Appellant was sentenced under this statute for a third PWID offense in 2013. As emphasized in the bold language above, third and subsequent PWID offenders could become eligible for parole and/or have their sentences reduced by way of earned early release credits only if all prior offenses were for simple possession under subsection (A).[4] The 2010 amendments left intact the eighty-five percent incarceration requirement for third and subsequent section 44-53-375 offenses beyond this

[4] Subsection 44-53-375(A) reads as follows:

> A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

exception. In other words, the existence of prior offenses above simple possession renders a third and subsequent offense under section 44-53-375 a "no parole" offense pursuant to subsection 24-13-150(A).

Here, the record includes Appellant's 2013 sentencing sheet which unambiguously indicates that he was sentenced under § 44-53-375(B) for a third and subsequent PWID offense. This 2013 sentencing sheet is controlling for purposes of Appellant's maxout date. According to the statute, Appellant is unable to apply the sentence-reduction credits enumerated in subsection (B) towards his maxout date if he was previously sentenced for offenses above the level of simple possession. The Record indicates that on February 13, 2008, Appellant pled guilty to PWID methamphetamine, first offense, under subsection 44-53-375 of the South Carolina Code (Supp. 2007). Appellant was sentenced to ninety days in a county detention center rather than SCDC custody. Accordingly, Appellant's 2008 PWID sentence precludes his exemption from the eighty-five percent service requirement because it constitutes a prior offense above the simple possession level as defined in subsection 44-53-375(A). *See* § 44-53-375(B):

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense **in which all prior offenses were for possession of a controlled substance pursuant to subsection (A)**, may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

(emphasis added).

Accordingly, third or subsequent offenders, such as Appellant, are exempt from the eighty-five percent service requirement under subsection 44-53-375(B) only when all prior offenses were for simple possession pursuant to subsection § 44-53-375(A). Because Appellant's 2008 PWID offense rises above the level of simple possession under subsection § 44-53-375(A), he is ineligible for the eighty-five percent exemption in subsection § 44-53-375(B). As such, the default "no parole" statute applies, and Appellant must serve eighty-five percent of his sentence as required for "no parole" offenses under subsection 24-13-150(A).

Although the Record does not include sentencing sheets pertaining to Appellant's second PWID conviction, the inclusion of this information would not negate Appellant's ineligibility for the eighty-five percent service requirement due to the existence of his prior 2008 PWID sentence.

Moreover, the Department is generally confined to the face of an inmate's sentencing sheet when calculating an inmate' intended sentence. *See Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014) (finding that absent ambiguity, the Department of Corrections is entitled to rely on information as written on an inmate's sentencing sheet when computing an inmate's projected release date). Because Appellant's 2008 sentencing sheet unambiguously reflects a methamphetamine offense above the level of simple possession, and Appellant's 2013 sentencing sheet (which controls his current maxout date) unambiguously reflects his third offense of the same, the Department was entitled to rely on this information when calculating Appellant's projected maxout date. As such, the Department did not err in finding that the eighty-five percent requirement applied based on this information.

Appellant's reliance on *Bolin* is misplaced. In *Bolin*, the Court of Appeals held that certain second offenses under sections 44-53-370 and 44-53-375 were no longer considered "no parole" offenses – irrespective of their felony status under 24-13-100 – due to the amended language to those provisions in 2010. *See Bolin* at 262, S.E.2d 917: "The legislature's use of the phrase "Notwithstanding any other provision of law," in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370." In other words, the Court of Appeals determined that it would be unreasonable for the Department to classify offenses for which the legislature clearly intended to extend parole eligibility as "no parole" even though those offenses carried prison sentences that would otherwise subject them to "no parole" classification per section 24-13-100.

As the Department's supplement to the Record validates Appellant's 2008 drug offense of the type rendering him ineligible for early release, discharge, or community supervision prior to completion of eighty-five percent of his sentence, the Department's decision must be affirmed.

ORDER

Finding no reversible error, it is **THEREFORE ORDERED** that the decision of the Department is **AFFIRMED** and this case is **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.

June 3, 2022
Columbia, SC

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 3 day of June, 2022

By: _____
Judicial Law Clerk

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