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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Robert L. Reibold

ALC Case No. 21-ALJ-04-0328-AP
Appellate Case No. 2022-000180

RONALD CEO, # 258464,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Ronald Ceo (“Appellant”), an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on June 11, 2021, seeking a change to his sentence calculation, claiming he was not receiving Good Time Credits or Earned Work Credits. *See R. p. 3.* This grievance was investigated and denied when it was determined that SCDC has properly calculated and applied Good Time Credits and Earned Work Credits to Appellant’s sentence. *See R. p. 4.* Appellant filed a Step Two Grievance on July 1, 2021. *See R. p. 1.* This grievance was also investigated and denied. *See R. p. 2.* Appellant filed a Notice of Appeal in the Administrative Law Court on August 31, 2021. Thereafter, on January 24, 2022, the Honorable Robert L. Reibold issued an order affirming the decision of the Department of Corrections. This appeal follows.

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 reviewing tribunal 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections, and Appellant has failed to show that the Department of Corrections committed any error with respect to the calculation of his sentence. On May 25, 1999¹, Appellant was sentenced to thirty-five (35) years for Homicide by Child Abuse. *See R. pp. 5-6.* Homicide by Child Abuse is an offense exempt from classification, which falls under S.C. Code Ann. § 24-13-100 and is also considered a violent crime. *See S.C. Code Ann. § 24-13-100* (“A ‘no parole offense’ means a class A, B, or C felony . . . which is punishable by a maximum term of imprisonment for twenty years or more.”); § 24-13-150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses); § 16-1-30 (“All criminal offenses created by statute after July 1, 1993, must be classified according to the maximum term of imprisonment provided in the statute and pursuant to Sections 16-1-10 and 16-1-20”); § 16-1-20(A)(1) (“A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.”). Therefore, Appellant must be incarcerated at least 85% of his 35-year sentence². *See R. pp. 5-6.*

Appellant argues that he is being denied access to earning Good Time Credits and Earned Work Credits on his sentence. *See App. Brief pp. 4-6.* Appellant is incorrect. S.C. Code Ann. 24-13-150(A) provides that “an inmate is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the

¹ Pursuant to SCACR 211(b)(2), the typographical error was corrected from May 23, 1999.

actual term of imprisonment imposed.” The eight-five percent must be calculated “without the application of earned work credits . . .” *Id.* Pursuant to S.C. Code Ann. § 24-13-230(B), Appellant’s sentence cannot be reduced below the minimum term of incarceration. Furthermore, because Appellant’s sentence is a no parole offense, he is only permitted to earn three days of good time per month, pursuant to S.C. Code Ann. § 24-13-210(B) and six days of work credits per month under S.C. Code Ann. § 24-13-230(B). As Judge Reibold found, Appellant is receiving these monthly credits and is not being improperly denied access to good time or work credits. *See* Honorable Robert L. Reibold’s Order, pp. 3-4 (January 24, 2022)³.

The record conclusively establishes that the “substantial evidence on the whole record” supports the Department’s final agency decision. In accordance with law and policy, the Department has issued all credits Appellant is entitled. 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 Service Comm’n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met his burden to demonstrate SCDC is incorrectly calculating his sentence.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court’s decision below.

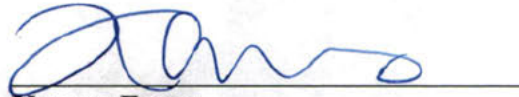
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² Pursuant to SCACR 211(b)(2), the typographical error was corrected from 21-year sentence.

³ Appellant failed to include the lower court’s order in his Record on Appeal, which was included in Respondent’s Designation of Matter filed with the Court on March 28, 2022. However, the lower court’s order was included in Appellant’s Notice of Appeal filed with the Court on February 17, 2022.

Respectfully submitted,

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August 18, 2022