

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 19 2022

SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Milton G. Kimpson, Administrative Law Judge
Docket No. 21-ALJ-04-0292-AP

Joseph McMorris, Jr., ----- APPELLANT,

v

S.C. Dept. of Corrections, ----- RESPONDENT.

APPELLATE CASE NO. 2022-001001

BRIEF OF APPELLANT

Joseph McMorris, Jr.
Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203
APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The ALC did err in affirming the decision of the Department which deemed Appellant ineligible to receive good time and work credits while on Parole.



STATEMENT OF THE CASE

On August 11, 2016, Appellant received a ten-year prison sentence for possession of methamphetamine, third offense, under subsection 44-53-375 (A) of the South Carolina Code. Appellant began serving his sentence on August 8, 2016, and was given three days of credit for time served prior to entering SCDC custody. The South Carolina Probation, Parole, and Pardon Services Board (DPPPS) later granted Appellant parole on October 17, 2018, which it subsequently revoked on November 18, 2020, upon determining Appellant violated the conditions of his supervision. Appellant was thereafter returned to SCDC to serve the remainder of his 2016 sentence. He was given day-for-day credit towards his release date for the time he served on parole.

On June 2, 2021, Appellant filed a Step One inmate grievance alleging the Department miscalculated the remainder of his sentence upon his return to SCDC custody when it declined to award him good time and earned work credits during his parole period. The Department subsequently denied Appellant's Step One and Step Two

grievances on the grounds that such conduct-based credits only applied to inmates confined to an SCDC institution, and that the Appellant was under the legal custody of DPPPS, not the Department, while released on parole.

Appellant appealed the Department's decision to the Administrative Law Court on July 30, 2021. The Administrative Law Judge made its Order on June 24, 2022, Affirming the Department's decision.

This appeal follows.

STANDARD OF REVIEW

Section 1-23-610 of the South Carolina Code (Supp. 2015) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. S.C. Dept of Corr. v Mitchell, 377 S.C. 256, 258, 659 SE2d 233, 234 (Ct. App. 2008);

This court confines its analysis on an ALC decision to whether it 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 an abuse of discretion or clearly unwarranted exercise of discretion. Kiawah Dev. Partners, II v. S.C. Dept of Health & Envtl. Control, 411 S.C. 16, 28, 766 SE2d 707, 715 (2014)

This court reviews questions of law de novo. S.C. Dept of Revenue v Blue Moon of Newberry, Inc., 397 S.C. 256, 260, 725 SE2d 480, 483 (2012).

ARGUMENT

The ALC did err in affirming the decision of the Department which deemed Appellant ineligible to receive good time and work credits while on Parole.

The ALC basis its determination that the Department's decision is correct on the basis that Appellant was not in physical custody and confinement of the South Carolina Department of Corrections (SCDC).

The ALC and Department fails to recognize that regardless of the place where Appellant was, he was in fact in "custody" of the State, SCDC. The South Carolina Supreme Court has defined "parole" to mean "a conditional release from imprisonment and does not suspend the running of the prisoner's sentence." State v Ellis, 397 SC 576, 579-580, 726 SE2d 5, 7 (2012). Also, addressing the status of a parolee, the South Carolina Supreme Court in Sanders v MacDougall, stated:

A prisoner upon release on parole continues to serve his sentence outside the prison walls. The word parole is used in contradistinction to

suspended sentence and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence." 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964).

The South Carolina Court of Appeals recently clarified that a defendant "continued to serve his sentence outside the prison walls and remained in legal custody while he was on parole, [I] he should receive credit towards the remainder of his sentence for the time he was on parole." Braxton v South Carolina Department of Corrections, 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020). Thus as Braxton's parole was revoked and he was ~~ordered~~ ^{ordered} to be returned to prison, he was entitled to credit against his remaining sentence for the time he spent on parole.

Appellant did receive the credit for the time he spent on parole, however, the SCDC declines to apply good time and work credits to this portion of time. The ALC in its order affirming the Department's decision does agree that:

"Although there is no evidence in the Record on Appeal establishing that Appellant was employed during the time he was on parole, it is more likely than not

that his status required some form of employment. Further, aside from the actions which lead to revocation of parole, Appellant most probably did exhibit some form of acceptable behavior while on parole." (ALC order pg.3)

Appellant was granted parole on October 17, 2018, and this parole was not revoked approximately two years later, on November 18, 2020. (ALC order pg.1, ALC App.p. The South Carolina Supreme Court makes clear that, "A convict released from the bounds of prison on parole, which did not suspend the running of his sentence, is entitled to the credit for time on account of good behavior..." Crooks v Sanders, 123 SC 28, 115 SE 760 (1922).

In addressing this, the ALC cites to S.C. Code Ann. § 24-21-670, which states:

"Any prisoner who may be paroled under authority of this chapter shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as may be provided for by law." S.C. Code Ann. § 24-21-670.

However, the ALC and Department fails to consider S.C. Code Ann. § 24-21-280(D), which states:

(D) "A probation agent, in consultation with the probation agent's supervisor, shall identify each individual under the department's supervision, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty-day basis, but must not be applied until after each thirty-day period of supervision has been completed.

Compliance credits may be denied for non-compliance on a thirty-day basis as determined by the department. The denial of non-earned compliance credits is a final decision of the department and is not subject to appeal.

An individual may earn up to twenty days of compliance credits for each thirty-day period in which the department determines that the individual has substantially fulfilled all of the conditions of the individual's supervision," S.C. Code Ann. § 24-21-280(D).

Further S. C. Code Ann. § 24-21-280 provides as follows:

(E) "Any portion of the earned compliance credits are subject to be revoked by the department if an individual violates a condition of supervision during a subsequent thirty-day period," S.C. Code Ann. § 24-21-280(E)

This statute should be given affect and it should work in tandem with S.C. Code Ann. 24-13-210, as the South Carolina Legislature makes it clear that the offender should receive credit for the terms of his behavior and work.

It should be noted that S.C. Code Ann. § 24-13-210 was amended by way of 2010 Act, No. 237, while S.C. Code Ann. § 24-21-280 was amended later by way of 2017 Act No. 75. This latest statute should prevail.

Appellant earned twenty days of compliance credits for each thirty-day period in which he remained successfully paroled as he substantially fulfilled his conditions of parole. The Judge who presided over Appellant's November 18, 2020, proceeding in which Appellant's parole was revoked did not make a declaration that Appellant would not receive the credits for his good behavior and working faithfully to ~~succeed on parole~~ succeed and satisfy his sentence and condition of parole.

Note that the Judge's order revoking parole neither specified that Appellant was to be given credit for the time he spent on parole. These things are simply unspoken and unspecified because the interest

of fairness counsels that Appellant should not be denied his credits for his efforts and time successfully served and in compliance with the conditions of his parole.

As the ALC's order does concede that Appellant most probably than not maintains some form of employment and also did exercise in exhibiting some form of acceptable behavior, equity should counsel this Court in this matter.

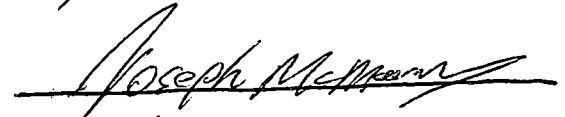
This Court reviews questions of law de novo. S.C. Dept of Revenue v Blue Moon of Newberry, Inc., 397 SC 256, 260, 725 SE2d 480, 483 (2012). The ALC's determination was in-fact affected by an error of law and in violation of statutory provisions.

The ALC's order should be reversed and Appellant should receive credit for his good behavior and maintaining employment while on parole.

CONCLUSION

Based on the foregoing reasons, the Administrative Law Court's decision should be reversed, and this Court, in the interest of equity and future guidance, create a bright-line rule by granting and declaring that credits be rightfully applied.

Respectfully submitted,



Joseph McMorris, Jr.

Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203

This 28 day of September, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Milton G. Kimpson, Administrative Law Judge
Docket No. 21-ALT-04-0292-AP

Joseph McMorris, Jr., ----- APPELLANT,

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S.C. Dept of Corrections, ----- RESPONDENT.

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APPELLATE CASE NO. 2022-001001
CERTIFICATE OF SERVICE

SC Court of Appeals

I, Joseph McMorris, Jr., hereby certify that I have served the Brief of Appellant, Certificate of Compliance, and Designation of Matter To Be Included In The Record On Appeal, on Respondent by placing a copy of the same inside of a postage prepaid envelope and by placing said envelope in the mail on this 28 day of September, 2022, for mailing via the United States Mail, addressed as follows: Annie L. Rumber, Deputy General Counsel, S. C. Dept. of Corrections, P.O. Box 21787, Columbia, SC. 29221-1787.

SI Joseph McMorris
Joseph McMorris Jr. #264508
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29202

September 28, 2022

Joseph McMorris, Jr., #264508
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502 Beckman Drive
Columbia, South Carolina 29203

The Honorable Jenny A. Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Joseph McMorris, Jr. v S.C. Dept of Corrections
Appellate Case No. 2022-001001

Dear Clerk Kitchings:

Please find enclosed the Brief of Appellant, Designation of Matter To Be Included In the Record on Appeal, and a Certificate of Service.

Please also find an additional copy of the same and a self-addressed stamped envelope. Please return a file-stamped copy to me, Joseph McMorris Jr, 118 Edna Drive, Carlisle, SC 29031. I am expecting release before you send. Thank you for your assistance in this matter.

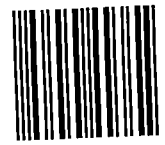
Sincerely, Joseph McMorris

Joseph McMorris, JR.
118 Edna Drive
Carlisle, SC 29031

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