STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Leonard Lee Foster, #179576, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 22-ALJ-04-0126-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Leonard Lee Foster (Appellant), an inmate incarcerated with South Carolina Department of Corrections (SCDC or Department), challenging the calculation of his sentence-related credits.

BACKGROUND AND PROCEDURAL HISTORY

On March 20, 2002, Appellant pled guilty to Habitual Traffic Offender and was sentenced to five years' incarceration. Appellant also pled guilty to driving under suspension and received a sixty-day sentence. Also, on March 20, 2002, Appellant was convicted of Felony Driving Under the Influence (DUI) in violation of section 56-5-2945 of the South Carolina Code (Supp. 2021) and was sentenced to twenty-five years' incarceration. He was also convicted of Reckless Homicide and was sentenced to ten years' incarceration. All of Appellant's convictions were ordered to run consecutive to one another. The sentencing sheets indicate Appellant received 493 day of jail time credit.

On March 1, 2022, Appellant filed a Step 1 Grievance, requesting to be awarded good time credits to reduce his sentence and be released early. Appellant alleged he was owed 6,000 days of good time credit and that section 24-13-210(A) of the South Carolina Code (Supp. 2021) applied to all of his sentences. After the grievance was denied, Appellant filed a Step 2 Grievance on March 15, 2022, asserting SCDC policy OP-22.57[1] is an ex post facto violation of section 24-13-210(A) and that he is entitled to good time credit. In the Department's denial of the Step 2 Grievance, it noted that he has "a mandatory term of incarceration of 21 years, 2 months and 30

[1] The Court notes that this argument regarding this specific policy was not preserved beyond the Step 2 Grievance; thus, it is considered abandoned on appeal.

days that must be served. In addition to the mandatory term, it has been confirmed that your time has been calculated to include all eligible good time credits earned as set forth by Central Classification (CC)."

Appellant filed a Notice of Appeal with this Court on April 28, 2022, asserting that pursuant to section 16-9-10 of the South Carolina Code (Supp. 2021), Turbeville classification willfully committed perjury. The case was assigned on May 19, 2022. Appellant filed a brief on June 6, 2022. The Department filed the Record on Appeal on July 28, 2022.[2] On September 6, the Department filed a Motion to Supplement the Record[3] and its brief. On September 20, 2022, Appellant filed a belated reply brief. [4]

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty interests in which an inmate contends that prison officials have erroneously calculated his or her sentence. *Id.* The Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754.

"A reviewing court will not disturb findings of [an administrative agency] if its findings are supported by substantial evidence on the record as a whole." *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 397, 489 S.E.2d 219, 220 (Ct. App. 1997). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219,

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[2] On August 9, 2022, Appellant filed a document requesting to strike the "allege murder conviction from the record." Although it was not properly filed as a Motion, the conviction he is referring to is not at issue in this case. Thus, the Court denies the request to strike.

[3] The Department requested to supplement the Record to include Appellant's updated Release Date screen and updated History of Earned Work Credit Assignments screen. Appellant has not filed an objection to the Motion. Therefore, the Court grants this Motion.

[4] A reply brief must be filed within one hundred twenty (120) days after the date of assignment. *See* SCALC Rule 60(A). The date of assignment was May 19, 2022; therefore, the reply brief was due on September 16, 2022. More importantly, there are no discernable issues of arguable merit resulting from the reply brief. Thus, the Court did not consider it in making this decision.

226, 467 S.E.2d 913, 917 (1996). Furthermore "the party challenging a[n administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record." *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

DISCUSSION

Appellant contends the Department has incorrectly calculated his sentence. Specifically, Appellant asserts that classification committed perjury by stating his offense of Felony DUI was a no parole offense and that he was given all eligible good time credits. Appellant contends his offense is a nonviolent parole offense and that the offense was reclassified as a violent no parole offense. Appellant further asserts he is entitled to good time credits of two years and 86 days and that the prohibition of a parole hearing violates his due process. Appellant cites to section 24-13-210(A) to support his assertions that he should be released early. The Department, however, asserts Appellant's sentence has always been a "no parole" offense and thus, he must serve a mandatory minimum of eighty-five percent of the sentence for Felony DUI. The Department further asserts Appellant has been awarded the correct amount of good time credit and his max-out date has been correctly calculated.

The sentencing sheets in the Record reflect that on March 20, 2002, Appellant was convicted of Felony DUI in violation of section 56-5-2945 and was sentenced to twenty-five years' incarceration.[5] Absent any ambiguity in the sentencing sheet, the Court must presume that the sentencing court's sentence is correct. *See Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014) ("[T]he Department is generally confined to the face of the sentencing sheets in determining the length of a sentence . . . [unless] there is an ambiguity in the sentencing sheets."). Here, Appellant's sentencing sheet unambiguously states Appellant was sentenced to twenty-five years for his violation of section 56-5-2945 and thus the Department was required to calculate Appellant's sentence pursuant to section 56-5-2945.

Section 56-5-2945 provides that

> a person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately

[5] Appellant also had other convictions, but those offenses are not at issue in this case.

> causes great bodily injury or death to another person **guilty of the offense of felony** driving under the influence..."

S.C. Code Ann. § 56-5-2945(A) (2018 & Supp 2021) (emphasis added). It further provides that "upon conviction, must be punished...by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and **mandatory imprisonment for not less than one year nor more than twenty-five years when death results.**" *Id* (emphasis added). Thus, the offense is a felony; specifically, a Class B felony under section 16-1-90(A) of the South Carolina Code (Supp. 2021). Pursuant to section 24-13-100, "a class A, B, or C felony" is a "no parole offense." S.C. Code Ann. § 24-13-100 (2007). Regarding no parole offenses, section 24-13-150(A) provides:

> (A) **Notwithstanding any other provision of law**, except in a case in which the death penalty or a term of life imprisonment is imposed, **an inmate convicted of a "no parole offense" as defined in Section 24-13-100** and sentenced to the custody of the Department of Corrections . . . **is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed**. . . . Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (2007 & Supp. 2021) (emphasis added). Because Appellant's offense is a "no parole offense," he is required eighty-five (85) percent of the sentence before being eligible for release from imprisonment.

Appellant also asserts his offense was reclassified from nonviolent to a violent no parole offense. However, Appellant appears to confuse violent and nonviolent terms with parole eligibility. Although Felony DUI was changed from "nonviolent" to "violent" in 2010, Appellant's offense is still classified as "nonviolent." *See* 2010 Act No. 273 § 26, eff June 2, 2010 (amending S.C. Code Ann. § 16-1-60). In addition, Appellant's offense, Felony DUI, which he was convicted and sentenced of after the enactment of the statute, is and has always been a "no parole" offense. *See* S.C. Code Ann. § 16-1-90(B) (1993) (identifying Felony DUI as a class B felony); and S.C. Code Ann. § 24-13-100 (1995) (defining no parole offenses to include class B felonies). Therefore, Appellant must serve eighty-five percent of his twenty-five-year sentence, which is twenty-one years, two months and twenty-nine days. Appellant then must serve his other sentences because they are consecutive sentences. Accordingly, the Department correctly calculated his sentence.

Kerr v State 345 SC 183 547 SE 2d 499 (2001)

1993 Act. No. 184 section 252
SC ST section 56-5-2945
by a mandatory fine of not less than five thousand dollars nor more than ten thousand dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury result

Causing great bodily harm or death while under influence of drug or alcohol
Section 252 Section 56-5-2945 (A)(1) of the 1976 Code is amended to read

Crimes - Classification ~~Bus~~ Generally 1993 South Carolina Laws Act 184 (H.B. 3151)

Additionally, Appellant's contention he has not been awarded all of his good time credits is unmeritorious. Section 24-13-210 of the South Carolina Code (Supp. 2021) provides, in pertinent part:

> (A) An inmate convicted of an offense against this State, **except a "no parole offense" as defined in Section 24-13-100**, and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. **When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.**

SC. Code Ann. § 24-13-210(A) (emphasis added). Thus, Appellant cannot earn good time credit for his Felony DUI conviction. Although Appellant can earn good time credits for his other "no parole" offenses, he must first complete the Felony DUI sentence since all of his convictions run consecutively. Therefore, Appellant's calculation of 2 years and 86 days of good time credit were incorrect and does not carry over to his other convictions.

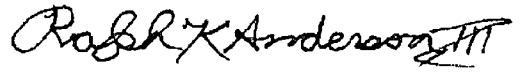
In sum, Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding "the party challenging [an administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.").

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED.**

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

September 27, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

September 27, 2022
Columbia, South Carolina