

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 02 2022

Appeal FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson III Judge

SC Court of Appeals

Case No. 2022-001485

Leonard Lee Foster, #179576

Appellant

v

South Carolina Department of Correction Respondent

INITIAL BRIEF OF APPELLANT

Leonard Lee Foster

Leonard Lee Foster, #179576
Livesay Correction Institution
P.O. Box 580
Una S.C. 29378

Table of Authority

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Other Authority

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STATEMENT OF ISSUE ON APPEAL

1. Did trial judge error in not considering September 19, 2022 reply brief?

STATEMENT OF CASE

On February 24, 2022 appellant submitted request Turbeville classification regarding days of good time credits owed.

Author's responsive pleading were central classification.

On March 1, 2022 appellant filed step 1 grievance requesting to be awarded good time credits pursuant S.C. Code 24-13-210 (a) and release from custody.

He also contend his ex post facto rights had been violated for failure to provide parole hearing after serving $\frac{1}{4}$ of felony dui sentence.

Respondent allege felony dui sentence was a non parole offense and appellant must serve mandatory minimum of 85% and he had been given all eligible good time credits and denied grievance on March 11, 2022

In Step 2 grievance appellant contend S.C. Policy OP-22 57 is an ex post facto violation of S.C. Code 24-13-210 the grievance was denied on April 15, 2022.

On Appeal appellant contend classification committed perjury by stating felony dui sentence was no parole offense and SCDC failed to award and or apply good time credit toward felony dui sentence pursuant S.C. Code 24-13-210 (a) and if they calculated credits according S.C. 24-13-210 (b) calculation still incorrect.

On September 9, 2022 appellant receive Respondent's September 2, 2022 brief alleging since felony dui is no parole offense and appellant is serving structure consecutive sentences for felony dui, reckless homicide and habitual offender the good time credit earned toward felony dui sentence does not carry over to reckless homicide and habitual offender sentences.

In the court's order held specific policy issue raised in Step 2 grievance is considered abandoned on Appeal and the request to strike the allege murder conviction from the record is denied.

Court's order also failed to consider September 19, 2022 reply brief stating it time belated and granted Respondent's motion

On Oct. 3, 2022 appellant submitted for rehearing thereafter court's held it was prohibit.

STANDARD OF REVIEW

Section 1-23-610 of the South Carolina Code 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. The review of the administrative law judge's order must be confined to the record. *Id.* The court of Appeals may reverse or modify the decision only if substantive rights of the appellant have been prejudiced because the decision is clearly erroneous in light of reliable and substantial evidence on the whole record arbitrary or otherwise characterized by an abuse of discretion or affected by other error of law.

FACTS

The case was assigned on May 19, 2022. Appellant filed initial brief on June 6, 2022. Respondent filed record on appeal on July 28, 2022 including SCDC Offender Management System Conviction Inquiry page 17 of 36 and page 23 of 36.

On September 2, 2022 Respondent filed a motion to supplement the record and initial brief whereas Appellant received the brief on September 9, 2022 and submitted reply brief on September 19, 2022.

According to Administrative Law Court Rule 3(c) Appellant's reply brief is timely.

ARGUMENTS

1. Because Respondent failed to award and/or apply good time credits earned from felony DUI sentence toward consecutive habitual offender and reckless homicide sentences trial judge abuse its discretion by failing to consider timely reply brief. Cook v State 326 SC 171 174-75 485 SE 2d 374, 375-76 (1997) the computing the time served by prisoner under sentences imposed by the courts of this State must be calculated from date of imposition of the sentence. *Id.* In computing the time served by a prisoner "full credits" against the sentence must be given for time served prior to trial and sentencing.

S.C. Policy DP-21.09 12.22 provides: when serving a consecutive sentence good time earned during the service of a sentence in the consecutive structure can not be lost or forfeited once that sentence is completed and the inmate has begun service on the other sentences in the consecutive structure.

Al-Shabazz v State 338 SC 354 527 SE 2d 742 (2000) the statutory right to sentence related credits is a protected "liberty" interest under the 14 Amendment entitling an inmate to minimal due process to ensure the state created right was not arbitrarily abrogated.

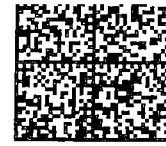
Conclusion

Based on foregoing this court should modify
Administrative Law Judge decision.

Date: Oct. 20, 2022
And reserved on November 27, 2022

Respectfully Submitted
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