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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ROBERT L. RIEBOLD, ADMINISTRATIVE LAW JUDGE

ALC Case No. 22-ALJ-04-0083-AP
Appellate Case No. 2022-001601

Charles Eugene Carpenter, #181783.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This case is before the Court of Appeals pursuant to the appeal of Charles Eugene Carpenter (hereinafter "Appellant"), an inmate in the custody of the South Carolina Department of Corrections (hereinafter "SCDC"). Appellant filed a Step One Grievance on November 20, 2019, requesting to have his good time and work credits calculated back to his sentence. (See Step One Grievance Form). The grievance was investigated and denied with the Warden advising Appellant that his sentence is a mandatory twenty-five year sentence and good time credits and work credits would not benefit, in that they would not reduce the mandatory time. (See Step One Grievance Form). Appellant filed a Step Two Grievance on December 20, 2019, again requesting to have his good time and work credits calculated back into his sentence. The inmate also stated in the grievance that the statute he was sentenced under did not say that it was a day for day statute. (See Step Two Grievance Form). This grievance was also investigated and denied because the statute that the inmate was sentenced under is a mandatory time statute that requires service of 100% of the time without the benefit of work credits and good time credits. *Id.* Appellant subsequently filed his Notice of Appeal with the Administrative Law Court.

Appellant filed the record on appeal with Administrative Law Court on May 12, 2020 and the Appellant's Brief on June 15, 2020. SCDC filed a motion to hold the Administrative Law Court proceedings in abeyance on July 2, 2020, as the Appellant had a pending appeal before the S.C. Court of Appeals.[1] The Administrative Law Court granted the motion on July 27, 2020. The Administrative Law Court lifted the stay on January 31, 2022. Appellant and Respondent filed

[1] In *Carpenter v. SC Department of Corrections and State of South Carolina*, 431 S.C. 512, 848 S.E. 2d 346 (Ct. App. 2020), the Court of Appeals held that Carpenter's claims are proper under the Post-Conviction Relief (PCR) Act and that Carpenter is procedurally barred from filing the claims under the Declaratory Judgment Act or in a petition for writ of habeas corpus. As Carpenter had not previously raised these claims in any PCR applications, the court construed Carpenter's habeas corpus petition as a PCR application and remanded to the circuit court for review of his claims. *Id.* The PCR action is currently pending in the Circuit Court (2016-CP-40-6916).

additional briefs, and on October 14, 2022, the Administrative Law Court issued an order affirming SCDC's determination. Specifically, Judge Riebold dismissed claims that Carpenter was being held unlawfully, as they were not properly before the Court, dismissed Appellant's claims that he was entitled to good time and work credits, dismissed claims that Appellant was denied due process as being moot and that if any deficiencies existed, those had been cured, and affirmed SCDC's actions in regard to Appellant's Equal Protection challenges for the removal of good time and work credits.

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

I. APPELLANT HAD NO SUBSTANTIAL RIGHTS IN THE GOOD TIME AND WORK CREDITS PREVIOUSLY GIVEN EFFECT FOR HIS BENEFIT AGAINST HIS REMAINING SENTENCE, AS THESE CREDITS WERE NOT A PROTECTED LIBERTY INTEREST

In his brief, Appellant argues that SCDC cannot take away good time and work credits once they are earned, as they are a protected liberty interest under the 14th Amendment. Appellant points to the *Furtick* case in his argument regarding the protected liberty interest and minimal due process requirements (*Furtick v. S.C. Dep't. of Corr.*, 374 S.C. 334, 649 S.E.2d 35 (2007)). While good time and work credits are used to reduce an inmate's sentence, which may result in those credits ultimately becoming a protected liberty interest, in this particular case, the good time and work credits could not have served the role of reducing Appellant's sentence due to the fact that Appellant was serving a mandatory minimum sentence. Both of his sentences were for, "a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted..." (S.C. Code Ann. §44-53-370(e)(2)(e) and S.C. Code Ann. §44-53-370(e)(1)(d)).

In *Kerr v. State*, the South Carolina Supreme Court distinguished a "mandatory minimum term of imprisonment" from the phrase "mandatory term." 345 S.C. 183, 547 S.E.2d 494 (2001). The ALC agreed that a mandatory minimum sentence must be served day for day. (See ALC Order p. 8). The Court noted that even if good time and work credits could be used to reduce any portion of the sentence that was above the mandatory minimum sentence, this would still not benefit the Appellant, as he only received a twenty-five year sentence. *Id.* Since the Appellant did not receive a sentence greater than twenty-five years, which is the mandatory minimum, good time and work credits cannot be used to reduce the Appellant's sentence, which means they have no value. *Id.* As both of Appellant's sentences fall under the statutory section that reference a "mandatory minimum term of imprisonment of twenty-five years," Appellant should be serving two consecutive twenty-five year, day for day sentences, with neither sentence being reduced by work credits or good time credits. (S.C. Code Ann. §44-53-370(e)(2)(e) and S.C. Code Ann. §44-53-370(e)(1)(d)).[2]

From the date he was sentenced, Appellant was never entitled to a reduction of his sentence by good time or work credits based on the language of the statute. At the time SCDC entered his sentences into the computer system, the sentences were entered correctly as two twenty-five year consecutive sentences, but unfortunately, the system did not calculate the day for day sentences correctly. On June 24, 2011, Appellant's record was audited and updated so that the twenty-five year sentences would calculate on a day for day basis without any reduction of time by work credits or good time credits.

[2] Significantly, the "85% law" (S.C. Code Ann. §24-13-150(A)) was not enacted until 1996, six years after the Appellant was sentenced. See Attorney General Opinion dated June 28, 2019, which provides the guidance that S.C. Code Ann. §24-13-150(A) is controlling with respect to the mandatory minimum twenty-five year drug trafficking statutes. (Attorney Gen. Op., dated June 28, 2019, https://www.scag.gov/wp-content/uploads/2019/07/StirlingB-OS-10367-FINAL-Opinion-6-28-2019-02007687xD2C78-02008817xD2C78.pdf)

While the SCDC system will still show work credits that can be earned towards a sentence, there is a difference in credits that may be earned and credits that are applied to reduce the amount of time an inmate will serve towards a sentence. A common example is inmates who are serving no parole, or 85% offenses. These inmates are required to serve a minimum of 85% of their total sentence (S.C. Code Ann. §24-13-150(A)). Inmates serving no parole offenses are allowed to earn work credits at the maximum level, but even if they earned enough work credits to reduce their sentence below the 85%, by statute, they still have to serve at least 85% of their sentence. In Appellant's case, by statute, his sentences are not allowed to be reduced from the mandatory minimum sentence of twenty-five years; therefore, these credits cannot be considered a protected liberty interest.

In addition, the argument that SCDC cannot take away credits once they are earned is flawed because of the way the SCDC disciplinary system is structured. The disciplinary system is organized so that inmates who receive disciplinaries not only fail to earn good time, but they are also subject to the loss of good time credits. If an inmate is found to be guilty of a disciplinary and the decision is made to take away earned good time, SCDC is allowed to take away these previously earned credits.

Finally, the proposition that SCDC can never take away credits once they are earned could have potentially unreasonable outcomes if this were to mean that SCDC could never make an adjustment, even if they knew that an inmate was going to be released at the wrong time. In fact, this could have been the very scenario with the Appellant had SCDC not corrected the way the system was calculating Appellant's sentence. Appellant could have been released prior to his true maxout date and this would have violated the sentence as ordered by the judge and required by the statute.

In his brief, Appellant also argues that the good time and work credits that had previously been granted to Appellant had been used for Appellant's benefit and were not speculative or for future application. Until an inmate's actual release date, all credits are speculative to a degree, which is why a maxout date is always considered projected until the inmate is actually released. Audits of records are completed up until the time the inmate is released. If at any point in the audit process it is found that SCDC has incorrectly applied credits, corrections must be made to the inmate's record to ensure the inmate is serving the full sentence as ordered by the judge and required by the statute. If any changes are made to the inmate's projected maxout date that are to the inmate's detriment, SCDC is then required to complete a due process hearing.

The ALC properly dismissed Appellant's claims that he was entitled to good time and work credits, as these credits were not a protected liberty interest.

II. THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S CLAIMS OF DUE PROCESS VIOLATIONS, AS APPELLANT HAS NOW BEEN AFFORDED DUE PROCESS

In his brief, Appellant argues that the ALC order was erroneous in its opinion that the review of Appellant's case (which has now occurred through the ALC process) sufficiently cured both the procedural and substantive due process defects he believes are required by the *Tant* case. (*Tant v. South Carolina Department of Corrections*, 408 S.C. 334, 759 S.E.2d 398 (2014)).

As indicated in Section I, Appellant's sentences were properly entered as twenty-five year mandatory minimum consecutive sentences, but it was later discovered that SCDC's system was not properly calculating the sentences as mandatory minimum or day for day. On June 24, 2011, Appellant's record was audited and updated so that the twenty-five year sentences would calculate on a day for day basis without any reduction of time by work credits or good time credits. At the time that SCDC updated and recalculated Appellant's sentences, there was no requirement of a

due process hearing for changes to an inmate's sentence and projected maxout date, as the *Tant* case was not filed until May 28, 2014.

In the *Tant* case, the Court held, "the Department must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing." (408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014). The *Tant* case ensures that the inmate has an opportunity to be heard through the grievance procedure. (*Id.*). Appellant has now had the opportunity to file a grievance and appeal the decision to the ALC. In its Order, the ALC states, "Even assuming SCDC violated Appellant's rights by failing to follow proper procedure, the relief for such a failure would be to afford Appellant the process and conduct a review, which has now occurred. Appellant has now received the process to which he claims he was entitled, curing any deficiency related to procedural due process." (*See James Acad. Of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 299, 657 S.E.2d 469, 472 (2008) (acknowledging the State may cure a procedural due process violation by providing subsequent procedural remedy): see also *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 492 S.E.2d 62, 71 (1997). (See ALC Order, p.10).

The ALC properly dismissed the Appellant's appeal by its conclusion that the Appellant has now been afforded the proper process and that the review that has now been conducted cures any procedural due process deficiencies.

III. THE ADMINISTRATIVE LAW COURT PROPERLY DETERMINED THAT APPELLANT FAILED TO ESTABLISH A CLAIM FOR EQUAL PROTECTION

In his brief, Appellant argues the ALC committed errors of law and drew arbitrary conclusions, which caused the equal protection violations to be missed. The Equal Protection Clause of the Fourteenth Amendment states, "No State shall…deny to any person within its

jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1. The South Carolina Constitution provides that no "person shall be denied the equal protection of the laws." S.C. Const. art. I, § 3. "The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995), "A crucial step in the analysis of any equal protection issue is the identification of the pertinent class....") *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013) (quoting *Sloan v. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 481, 636 S.E.2d 598, 613 (2006), overruled by *Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 790 S.E.2d 763 (2016)).

Appellant has never made it clear the class to which he is stating he belongs. Appellant cites the similarity with Bobby Horne (hereinafter "Horne"), but as the ALC opinion states, "However, Appellant does not identify a group to which he belongs but Horne and/or others do not." (See ALC Order, p.11). If Appellant is arguing that he and Horne and other inmates who have mandatory minimum sentences are in the same class, this argument cannot succeed because there are too many other variables that are part of an inmate's sentence calculation to allow the initial sentence alone to be the basis for the inmates to be classified as similarly situated. Pre-trial detention time, disciplinaries while incarcerated, and work credits earned can all impact an inmate's sentence and lead to differing maxout dates on identical sentences.

Appellant argues in his brief that there are valid equal protection claims that involve classes of one, where an individual is treated differently with no rational basis for the disparate treatment. According to the ALC Opinion, even if this case were to be considered a class of one case, Appellant would still have to overcome the rational basis test, as a suspect classification or fundamental right is not in issue. (See ALC Order p. 11-12 citing *McCleod v. Starnes*, 396 S.C.

647, 723 S.E.2d 198 (2012)). In *Luckabaugh* the court stated, "A classification does not violate the equal protection clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." See *Curtis v. State*, supra, (citing *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 524 S.E.2d 404 (1999)). 351 S.C. 122, 351 S.C. 122 (2002). SCDC still has a legitimate and reasonable basis for treating Appellant's sentence differently. As Appellant was still in the custody of SCDC when the calculation issue was discovered, SCDC had an interest in correcting the calculation issue and ensuring that the Appellant served the full sentence as ordered by the judge and required by the statute. The ALC agreed there was a rational basis for SCDC's actions. In its Order, the ALC states, "Under SCDC's logic, to which Appellant apparently concedes, SCDC made an error in recording good-time and work credits on Appellant's and Horne's records. When SCDC realized this mistake, it tried to correct its error. It was able to correct Appellant's record but was unable to correct the error on Horne's record because Horne had already been released. ...Appellant essentially argues that two wrongs make a right, or stated differently, that because Horne benefited from a mistake by SCDC, he should receive the same benefit." (See ALC Order, pp.12-13).

In his brief, Appellant argues that there is no legal basis for the ALC's statement that if Horne had still been in prison in 2011 when the audit of the drug trafficking sentences was completed that his record would have also been corrected. While no one can say with certainty what would have happened with Horne's record for an audit that occurred twelve years ago, there is certainly evidence that other records were corrected in completing this audit. The Appellant provided Exhibit E in his ALC brief which referenced several other inmates who had trafficking

sentences along with notations of how these records were affected. There are notations on this exhibit that sentences were updated to mandatory minimum sentences. Updates of this nature are completed by SCDC to ensure inmates serve the full sentence as ordered by the judge and required by the statute.

The ALC properly dismissed Appellant's appeal where Appellant failed to establish a claim for equal protection.

CONCLUSION

The ALC's decision is supported by substantial evidence and is neither effected by legal error nor clearly erroneous in view of the whole record. Therefore, it should be upheld.

Respectfully submitted,

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