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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Watkins, #243803,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 22-ALJ-04-0297-AP

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ORDER

LIVESAY

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

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellant was arrested on December 19, 2001. On October 25, 2002, Appellant was convicted of Armed Robbery in violation of section 16-11-330 of the South Carolina Code and sentenced to thirty years' incarceration. Appellant was also convicted of Possession of a Weapon During the Commission of a Crime in violation of section 16-23-0490 of the South Carolina Code and sentenced to five years' incarceration to run concurrently. Subsequently, Appellant filed a Post Conviction Relief (PCR) action in which he was successful. His convictions and sentences were reversed and his case was remanded for a new trial.

On September 24, 2008, after a new trial, Appellant was again convicted of Armed Robbery under section 16-11-330 and Possession of a Weapon During the Commission of a Crime under section 16-23-0490. He was sentenced to twenty-five years' incarceration and five years' incarceration respectively, this time consecutively. Thus, although Appellant's sentence for armed robber was reduced the second time around, because his sentences now run consecutively, his combined sentence is still thirty years' incarceration similar to the first time he was sentenced.

On May 30, 2022, Appellant filed a Step 1 Grievance with the Department asserting his sentence was improperly calculated. He specifically argues the Department did not calculate his sentence in compliance with section 24-13-40 of the South Carolina Code to give him credit for the time he had already served for his original five-year sentence for Possession of a Weapon

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During the Commission of a Crime. He argues his max out date was, therefore, incorrect. The grievance was review and denied on August 20, 2022. On September 9, 2022, Appellant filed a Step 2 Grievance, which was also denied. Appellant subsequently filed a Notice of Appeal with this Court on November 8, 2022, asserting that his sentence has not been properly calculated. The case was assigned on November 17, 2022. Appellant filed his brief and a Motion for SCDC to Disclose (Motion) on January 23, 2023. On January 24, 2023, the Department filed the Record on Appeal. On February 2, 2023, the Department filed a Response in Opposition to Appellant's Motion. On March 7, 2023, the Department filed its brief. On March 13, 2023, this Court issued an Order granting in part and denying in part Appellant's Motion. On March 14, 2023, Appellant filed a reply brief.

JURISDICTION/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 factual findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 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 asserts that he should receive credit for time served for his original five-year sentence for Possession of a Weapon During the Commission of a Crime, which should be subtracted from his new five-year sentence for the same conviction in 2008. He claims the Department is not giving him proper credit for his time served under section 24-13-40 of the South Carolina Code, and, as a result, his projected max out date is incorrect. Specifically, he claims that his max out date should be March 17, 2023, rather than the Department's calculated max out date of March 17, 2028.

In contrast, the Department argues it properly gave Appellant credit for his time served. The Department explains that Appellant first served five years for the weapons conviction, which was calculated from the date of his arrest, December 19, 2001, and completed on December 18, 2006. Because Appellant's robbery conviction is consecutive, the start date for Appellant's robbery charge was December 18, 2006. Additionally, because the robbery conviction is a "no parole" offense, Appellant must serve eighty-five percent of the sentence or approximately twenty-one years, two months, and twenty-nine days. When twenty-one years, two months, and twenty-nine days is added to the start date of December 18, 2006, it results in a projected max out date of approximately March 12, 2028.

I find the Department's sentence calculation is correct.

Section 24-13-40 of the South Carolina Code (Supp. 2022) provides, in pertinent part:

In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

This statute requires that prisoners be given credit for all time served prior to sentencing unless either of the two statutory exceptions applies. *See id.* Neither of the two exceptions apply here, and the Record shows Appellant was given credit for time served. Appellant has been incarcerated since December 19, 2001, when he was originally arrested. The Department has calculated Appellant's sentence from that start date and therefore given him credit for his time served before his final convictions on September 24, 2008.

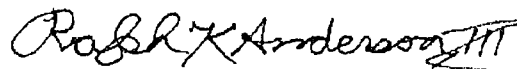
On September 24, 2008, Appellant was convicted of Armed Robbery under section 16-11-330 and Possession of a Weapon During the Commission of a Crime under section 16-23-0490. He was sentenced to twenty-five years' incarceration and five years' incarceration respectively. Importantly, these sentences were to run consecutively. The Department applied the five-year weapons sentence starting on December 19, 2001, and properly calculated that Appellant finished that sentence on December 18, 2006. Then, since Appellant's robbery conviction ran consecutive to the weapons conviction, the start date of the twenty-five-year sentence for his robbery conviction began on December 18, 2006. As the Department correctly notes, conviction for armed robbery under section 16-11-330 is a no-parole offense. *See* S.C. Code Ann. § 16-1-90 (classifying robbery while armed with a deadly weapon as a Class A felony); S.C. Code Ann. § 24-13-100 (defining a Class A felony as a "no parole offense"). Because it is a no parole offense, Appellant must serve eighty-five percent of his twenty-five-year sentence, or, as the Department correctly calculated, twenty-one years, two months, and twenty-nine days. *See* S.C. Code Ann. § 24-13-150(A) (requiring an inmate convicted of a no parole offense to serve at least eighty-five percent of their sentence). Once twenty-one years, two months, and twenty-nine days is added to the start date of December 18, 2006, it results in a projected max out date of approximately March 12, 2028, as the Department calculated.

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, supra.*

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

March 30, 2023
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

March 30, 2023
Columbia, South Carolina