

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

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Case No. 11-ALJ-04-0895-AP

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Dazzelle Smith, # 330312.....Appellant,

v.

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

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**INITIAL BRIEF OF RESPONDENT**

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June 26, 2013

South Carolina Department of Corrections

Shanika K. Johnson  
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JUN 27 2013  
**SC Court of Appeals**

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**STATEMENT OF THE ISSUE ON APPEAL**

- I. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

## STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Dazzelle Smith (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant is currently committed to SCDC with a three year and six month sentence for Possession with Intent to Distribute Crack Cocaine (2<sup>nd</sup> Offense) (R.p. \_\_\_\_)

Appellant filed a Step One Grievance on July 15, 2011, challenging SCDC’s interpretation of his sentence and his custody status. This grievance was investigated and denied. (R.p. \_\_\_\_). Appellant filed a Step Two Grievance on July 30, 2011, which was also denied. (R.p. \_\_\_\_). Appellant then filed a notice of appeal with the Administrative Law Court on November 9, 2011. (R.p. \_\_\_\_).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding that Appellant’s sentence was being interpreted correctly and that his custody status was correct. The ALC rejected appellant’s argument that he should have a custody status of non-violent and that he is not required to serve 85% of his sentence. (R.p. \_\_\_\_).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

## 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 of 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.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC

reached. DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

## ARGUMENT AND CITATION OF AUTHORITY

### I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented during Appellant's appeal supports SCDC's decision. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. (R.p. \_\_\_\_\_). Appellant's sentencing sheet demonstrates that Appellant was sentenced to three (3) years and six (6)

months for the manufacturing and/or possession of crack cocaine with the intent to distribute. By statute, Appellant's offense requires Appellant to serve 85% of his sentence before he is eligible for early release, discharge, or community supervision. S.C. Code Ann. § 24-13-150(A) (Supp. 2011). This requirement was a result of the statute, not an SCDC policy. Accordingly, SCDC is correct in calculating Appellant's sentence to require 85% of his sentence to be fulfilled before he is eligible for release.

Appellant further argued that he should not be classified as a violent offender for purposes of SCDC custody. However, SCDC's Classification policy states that if an inmate has had at least one violent conviction, the SCDC classification will indicate violent. In 2008, Appellant had previously been convicted and sentenced to three years for Trafficking Crack Cocaine (1<sup>st</sup> offense) which is classified by statute as a violent offense. (R.p. \_\_\_\_\_). Accordingly, even though Appellant's current conviction is not classified as violent, SCDC gave him a violent custody status due to his previous conviction.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

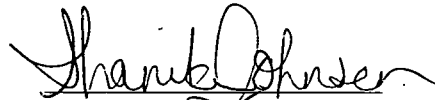
### **CONCLUSION**

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

Attorney for Respondent

A handwritten signature in black ink, appearing to read "Shanika K. Johnson". The signature is written in a cursive style with a horizontal line underneath it.

Shanika K. Johnson

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**CERTIFICATE OF SERVICE**

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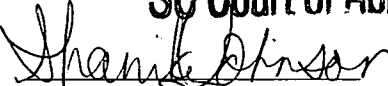
I hereby certify that I have served Appellant a copy of Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, June 26, 2013 addressed to the Appellant as follows:

Dazzelle Smith #330312  
Ridgeland Correctional Institution  
5 Correctional Road  
Ridgeland, SC 29936

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JUN 27 2013

SC COURT OF APPEALS



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