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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

ALC Case No. 22-ALJ-04-0207-AP
Appellate Case No. 2022-001813

Richard V. Clowney, #276073.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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June 7, 2023

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE AGENCY'S CALCULATION OF APPELLANT'S SENTENCE.**

STATEMENT OF THE CASE

This case is before the Court pursuant to the appeal of Richard V. Clowney (“Appellant”), an inmate incarcerated with the Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on June 8, 2022, alleging SCDC incorrectly calculated his reinstated suspended sentence and requested SCDC award him two-year house arrest credit from while Appellant was on the Home Incarceration Program (“HIP”) towards his probation revocation. This grievance was investigated and denied on June 13, 2022. On June 16, 2022, Appellant filed a Step Two Grievance alleging SCDC incorrectly calculated his pre-revocation time served credit. This grievance was investigated and denied on July 7, 2022.

Appellant subsequently filed his Notice of Appeal with the Administrative Law Court (“ALC”). The record on appeal was filed on September 23, 2022. On November 23, 2022, Respondent supplemented the record with additional documents as additional jail time credit was added to Appellant’s three firearms charges¹ along with documents relating to Appellant’s probation revocation. The appeal in the ALC went forward, and on December 14, 2022, the Honorable Ralph King Anderson, III, issued an order affirming the decision of the Department of Corrections regarding Appellant’s sentence calculation. This appeal follows.

¹ Appellant’s three firearms charges were: (1) possession of a pistol in violation of S.C. Code Ann. § 16-23-0030; (2) possession of a firearm by a person convicted of a violent crime in violation of S.C. Code Ann. § 16-23-500(A); and (3) unlawful carrying of a pistol in violation of S.C. Code Ann. §

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 the 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. THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE AGENCY'S CALCULATION OF APPELLANT'S SENTENCE.

In this case, the ALC properly affirmed the decision of the Department of Corrections because the Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence. Rec. pp. 17-22.

On November 13, 2018, Appellant plead guilty to distribution of heroin 1st offense in violation of S.C. Code Ann. § 44-53-0370. Rec. p. 11. Appellant was sentenced to eight years, suspended to an active home detention sentence, also known as Home Incarceration Program ("HIP"), of two years, followed by eighteen months' probation. Rec. p. 11.

While serving the home detention sentence, Appellant violated the conditions of the program on two occasions and his home detention sentence was revoked each time. *See* Rec. pp. 9-10. First, on June 11, 2019, Appellant's home detention sentence was revoked for failure to comply with the conditions of the program, and he was sentenced to six months in SCDC. Rec. p. 10. The sentence order indicated that Appellant was to be reinstated on home detention following service of the SCDC sentence, and that he not be given credit for prior jail time served. Rec. p. 10. Appellant had two days of *Hayes*² credit, which SCDC applied to the six-month sentence.

Thereafter, following Appellant's return to home detention, he violated the terms again, and on November 15, 2019, he was sentenced to 500 days in SCDC. Rec. p. 9. The remainder of his sentence was to be terminated. Rec. p. 9.

Upon completion of his sentence, Appellant was released to probation. Appellant subsequently violated the terms on his probation, and a warrant for a probation violation was issued

on July 1, 2021. Rec. pp. 8, & 37-38. On January 19, 2022, Appellant's probation was revoked, and Appellant was sentenced to three years at SCDC. Rec. p. 8. Additionally, the boxes on the Form 9 probation revocation form are marked indicating that Appellant was to be given credit for pre-revocation hearing detention time on the current probation violation, and that Appellant be given credit for pretrial detention time served and stated in parentheses it says "N/A if defendant has served prior SCDC time." Rec. p. 8.

Thereafter, on June 1, 2022, Appellant pled guilty to three firearms charges. The three firearms charges include: (1) unlawful possession of a pistol in violation of S.C. Code Ann. § 16-23-0030 and Appellant was sentenced to three years' incarceration, rec. pp. 6-7; (2) possession of a firearm by a person convicted of a violent crime in violation of S.C. Code Ann. § 16-23-500(A) and Appellant was sentenced to three years' incarceration, rec. pp. 4-5; and (3) unlawful carrying of a pistol in violation of S.C. Code Ann. § 16-23-0020 and Appellant was sentenced to one year incarceration, rec. pp. 2-3. All three firearms charges were run concurrently and were backdated from December 21, 2021. Rec. pp. 2, 4, & 6. Applicable jail time credit further pushed the sentence start date of the firearms charges back to November 26, 2021. Rec. pp. 42-45.

A. Appellant's probation revocation has been correctly calculated.

Appellant's probation revocation has been correctly calculated by the Respondent. Appellant was sentenced for the probation revocation on January 19, 2022. Rec. p. 8. The date of issue of the Warrant for the Probation Revocation is July 1, 2021. *See* Rec. pp. 8 & 37-38. Appellant is entitled to jail time credit pursuant to S.C. Code Ann. § 24-13-40 from the date of issue of the warrant for the probation revocation. *See Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000). That means Appellant

² *See Hayes v. State*, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015).

gets jail time credit for time spent incarcerated after July 1, 2021. According to the Jail Time Report provided by Greenville County, the Appellant was locked up following the issuance of the probation revocation warrant from October 3, 2021 through October 29, 2021, and also from January 15, 2022 through January 19, 2022. *See* Rec. pp. 12-13. The partial probation revocation of three-years which is also terminating Appellant's probation is entitled to pre-revocation jail time of thirty days which is being credited towards Appellant's sentence and therefore the sentence start date for the probation revocation is December 20, 2021. *See* Rec. p. 12-13, 32, 42, & 47.

Appellant had previously served two-years of his original eight-year sentence, therefore, six years remained for the Appellant to serve towards this sentence. Appellant would not be entitled to the two-days *Hayes* credit on this probation revocation as this time was already credited towards his six-month HIP violation that occurred on June 11, 2019, and the Form 9 itself also confirms that a defendant will not receive credit for pretrial detention time if they have served prior SCDC time. Rec. p. 8. Appellant will not receive credit for the two-year HIP sentence that was served both on HIP and at SCDC towards his current three-year probation revocation as that two-years was the original incarcerative portion of the split sentence.

Appellant's probation revocation start date is December 20, 2021. *See* Rec. pp. 32 & 42. Appellant was sentenced to three-years for the probation revocation, or One-Thousand-Ninety-Five (1095) days. Rec. p. 32. Appellant is earning good time and work credits towards his sentences. Rec. p. 32. Appellant's current projected maxout date for the probation revocation is on or about July 11, 2023. Rec. p. 32. Appellant has not carried his burden to demonstrate Respondent has incorrectly calculated his sentence. Therefore, the Administrative Law Court's decision should be affirmed.

B. Appellant misconstrues the application of S.C. Code Ann. § 24-13-40 to his current firearms charges.

Appellant asserts that Respondent has incorrectly calculated his time served credits to any of his sentences, including his three firearms charges. Appellant is incorrect. Appellant's three firearms charges all occurred on October 3, 2021. *See* Rec. pp. 33- 36, 43-45. Appellant cannot get jail time credit from before the offenses ever occurred. "Our supreme court has defined 'time served,' as it is used in section 24-13-40, as 'the time during which a defendant is in pre-trial confinement and charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction.)'" *State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 183 (*quoting Blakeney*, 339 S.C. at 88, 529 S.E.2d at 10-11 (emphasis in original)). Based on the definition of time served, Appellant's claim fails as a matter of law. Additionally, Appellant is receiving the backdate of December 22, 2021, per the judge's order, *see* rec. pp. 2, 4, 6, and also receiving jail time credit from October 3, 2021 to October 29, 2021, rec. p. 12, as jail time credit towards Appellant's firearms charges. Appellant's sentences start for the firearms charges is November 26, 2021. *See* Rec. pp. 43-45. Appellant is receiving the proper amount of jail time credit for the firearms charges.

The Administrative Law Court correctly determined that Appellant has not carried his burden to demonstrate SCDC improperly calculated his sentence. *See* ALC Order dated December 14, 2022 at Rec. 17-22. "[T]he Department is confined to an unambiguous sentencing sheet..." *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 347, 759 S.E.2d 398, 404 (2014), reh'g denied (July 10, 2014). Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.