RECEIVED
AUG 17 2023
SC Court of Appeals

STATE of South Carolina
In the Court of Appeals

Appeal from Administrative Law Court
Ralph King Anderson, III Judge

Robert Watkins, Appellant

v

South Carolina Department of Corrections, Respondent

Appellate case NO 2023-000603

final Brief of Appellant

Robert Watkins 243803
2-2-B
Livesay Corr. Inst.
P.O. Box 580
Una SC, 29378

TABLE OF CONTENTS

Table of Authorities

Statement of issue on Appeal

Did the Administrative Law court abuse its discretion in its order dated March 30. 2023 Docket NO. 22-ALJ-04-0297-AP. filed with the S.C. Court of Appeals on April 14. 2023 in its findings that Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed.?

Statement of the case and Procedural History

On 12-19-01 Appellant was arrested, after being interrogated and giving a statement of his where abouts, arrest warrant G865977 for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery was issued, along with a search warrant, to search the residence appellant lived at, inwhich a Gun and mask was obtained. On 12-21-01 arrest warrant G865988 for violation of S.C. 1976 Code of law §16-23-490 Possession of a weapon during the commission of or attempt to commit a violent Crime (PWDCVC) were issued. On January 14 2002 the solicitors office prepared an Indictment for violation of S.C. 1976 Code of law §16-11 330(A) armed robbery and §16-23 490 PWDCVC and assigned docket number 2002-GS-23-1063. On October 23-25 2002 Appellant was tried before the Honorable Judge Victor C. Pyle Jr. of the 13th Judicial Circuit Court at Greenville County in a jury trial inwhich he was convicted. Judge Pyle, sentenced Appellant to SCDC for a period of 30 years for armed robbery and a concurrent 5 year sentence for PWDCVC, time to begin from 12-19-01.

Appellant filed a timely Notice of appeal with S.C. Court of Appeals. The appeal was dismissed pursuant to Anders v California 386 U.S. 73 (1967) State v Watkins Op. No 2004-UP-406 S.C. Ct App June 22, 2004.

On October 22, 2004 Appellant filed an Application for Post-Conviction Relief case 2004-CP-23-7064 An evidentiary hearing was held before Judge Larry. R. Patterson. on January 17. 2006 Judge Patterson issued an order denying and dismissing the application for Post-conviction Relief with prejudice.

(Appellant PCR counsel Rodney Richey filed a timely Notice of Appeal with S.C. Supreme Court. The S.C. Supreme Court granted Appellants Petition for a Writ of habeas Corpus and issued an order reversing Judge Patterson order denying Appellants application for PCR, and granting Appellant a new trial. see Watkins v State, Memorandum Opinion No 2008-mo-001.

On September 22-29, 2008 Appellant was retried a second time by the Solicitors office of Greenville County

under the same Indictment 2002-GS 23-1063 for violation of S.C. 1976 Code of Law §16-11-330(A) armed robbery and §16-23-490 PWDCVC that was used to try him and convict him back on October 23-25th 2002 before Judge Victor C. Pyle, Jr. Only this time after being retried a second time for the same offenses and based upon the same facts and evidence, Appellant was sentenced to the SCDC By Judge Larry R. Patterson under Indictment 2002-GS-23-1063 to 25 years for violation of S.C. 1976 Code of law §16-11-330 (A) armed robbery and 5 years consecutive for violation of S.C. 1976 Code of law § 16-23-490 PWDCVC.

Judge Larry R. Patterson denied Appellant his 9 months, 5 days, 6 years for the time he had served from 12-19-01 to 9-24-2008. that he was entitled to pursuant to S.C 1976 Code of law § 24-13-40. which provides: The computation of the time served by prisoners under sentence imposed by the courts of this State shall be reckoned from the date of the imposition of the sentence ..... In every case in computing the time served by a prisoner full credit against the sentence shall 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.; when Judge Patterson didnt check the Box on the sentencing sheets in which he sentenced Appellant to 25 years for violation of S.C. 1976 Code of law § 16-11-330(A) armed robbery and 5 years Consecutive for violation of S.C. 1976 Code of law § § 16-23-490 PWDCVC, which provides: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the Department of Corrections.

Section § 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the two exception applies State v McCord, 349. S.C 478, 487, 562 S.E.2d. 689, 694 (C.t. App. 2002).

STANDARD of review

"In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review." Kiawah Dev. Partners, II v S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). "Section 1-23-610 South Carolina Code (Supp. 2020) sets forth an administrative agency." S.C. Dep't of Corr v Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct App. 2008). "The review of the [ALC's] order must be confined to the record." S.C. Code Ann. §1-23-610(B). (Supp. 2020). "[This] court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on question of fact." Id. "In determining whether the [ALC's] decision was supported by substantial evidence, [this] court need only find.... evidence from which reasonable minds could reach the same conclusion as the ALC." Kiawah, 411 S.C. at 28, 766 S.E.2d at 715. However, when the issue on review raises a question of law, this court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." Id Statutory interpretation is a question of law." Chapman v S.C. Dep't of Soc. Servs., 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct App 2017) (quoting S.C. Coastal Conservation League v S.C. Dep't of Health & Control, 390 S.C. 418, 425, 702

S.E.2d. 246, 250 (2010) "Unless there is a compelling reason to the contrary, appellate courts 'defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations.'" Id at 188, 691 S.E.2d at 403 (quoting Kiawah, 411 S.C. at 34, 766 S.E.2d at 718); see Kiawah, 411 S.C. at 34-35, 768 S.E.2d at 718 ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844, 104 S. Ct. 2778, 81 L. Ed. 2d. 694 (1984))).

Argument

Appellant argues that S.C Court administration Hawkin (Courtlin judge Ralph K Anderson III order issued on March 30, 2023 Docket NO 22-ALJ-04-0297-AP that Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed Id. ROA pages 1-5 exhibit (1) ... and is arbitrary, capricious or manifestly contrary to the Statute 24-13-40 and an abuse of discretion. The Administrative Law Court Judge Anderson in his discussion Id. in ROA page 13 through page 4 of Exhibit (1) states, the Department argues it properly gave Appellant credit for time served. The Department explains that Appellant first served five years for the weapon 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. Judge Anderson III found the Department's sentence calculation is correct, quoting S.C. 1976 Code of Law § 24-13-40. further stating, 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 exception applies 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 weapon 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.
see Id at R.O.A. page 9 Exhibit #1 page 13 and 14. w/o.s.
attached and enclosed.. Judge Anderson Basically also
confirmed and agreed with what the Respondent
Joseph R. Shakibanasab argued in his Respondents
Brief of Docket NO: 22-ALJ-04-0297-AP
Grievance NO: PCI 292-221 dated March 7 2023
see Id in R.O.A. Exhibit #2 pages 6 through 11 attached
attached. SCOC interpetation of S.C. 1976
Code of law §24-13-40 is arbitary, capricious and
Manifestly contrary to S.C. 1976 Code of law § 24-13-40.
1st SCOC Pursuant to Major v S.C. Dept of Prob.
Parole & Pardon Servs. 384 S.C. 457, 468, 682
S.E.2d 795, 801, (2009) restructured Appellant
calculation of his sentence pursuant to S.C. 1976
Code of law §24-13-40 as though Appellant was
eligible for parole, and conserving that the
5 year consecutive sentence for violation of
S.C 1976 Code of law §16-23-490 PWOCVC in which
is a no-parole offense, prevented Appellant from
making parole on the 25 year armed robbery sentence
imposed for vidation of S.C. 1976 Code of law §16-11-330(A)

see Id in ROA pages 12-17 Exhibit #B. The state interpretation of §24-13-40 under Major v S.C Dept of Prob. Parole & Pardon Servs, Supra was that When a defendant receives a consecutive sentence, the prior sentence(s) and the consecutive sentence(s) are considered one sentence for the purpose of providing jail time credit. Jail time credit is counted once toward the string of sentences. S.C. Code Ann §24-1-30 charges SCDC with carrying out S.C. Code Ann § 24-13-40 As such, the agency's interpretation of this statute is entitled to deference. see Id in ROA pages 8,9 Exhibit #2.

Neither offense inwhich Appellant was convicted for and sentence to SCDC for on 9-24-2008 Tis an parole eligible offense. Id in ROA page 16317 of Exhibit #3. So the Majors v S.C. Dept of Prob Parole & Pardon Servs. Supra doesn't apply to Appellant, because neither offenses, Id in ROA page 16-17 of exhibit #3, for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery and §16-23-490 pwodvc. So Appellant 5 year consecutive sentence for violation of S.C. 1976 Code of law §16-23-490 PWDDVC should not have been calculated first, before the aggregated 25 year armed robbery

sentence for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery; for the trial Judge sentenced Appellant first to 25 years for armed robbery and then secondly to 5 year consecutive for violation of S.C. 1976 Code of law § 16 23-490. see Id in R.O.A page 16-17 of Exhibit #3 dated. Inwhich pursuant to S.C. 1976 Code of law §24-13-40 in calculating the 25 year armed robbery sentence. Id in exhibit #(3) imposed on 9-24-2008. Appellant was sentenced to 25 years for armed robbery. pursuant to S.C. 1976 Code of law 24-13-150(A) Appellant is to serve 85% percent of 25 years, which is 21 years, 2 months, 29 days. 21 years, 2 months, 29 days, from 9-24-2008 = 12-23-29. according to Appellants Oct 25, 2002 Conviction inwhich he was given credit from 12-19-01 Id in R.O.A page 14, 15 of exhibit #3... and Sentence to 30 yrs for armed robbery and 5 years Concurrent for PWDLVE. and the sentence he received in a retrial and conviction under the same Indictment # 2002-GS-23-1063 25 years for armed robbery and 5 years Consecutive for PWDLVE on 9-24-2008. Id in R.O.A page 16-17 Exhibit #3 dated Appellant was entitled to credit for time served under Indictment 2002-GS-23-1063 from 12-19-01 to 9-24-2008 inwhich is 9 months, 5 days, 6 years; So 12-23-29 minus 9 months, 5 days, 6 years, gives Appellant a projected

max out date of 3-18-23 in which has expired under Indictment 2002-GS-23-1063 September 24, 2008 Conviction for 25 years armed robbery Id in R.O.A. page 16 & Exhibit #3

When SCDC starts Appellant 25 year sentence from 12-18-2006, that calculation is arbitrary and capricious and in violation of Appellant statutory created liberty interest in violation of Appellants due process and equal Protection of right of S.C. Const. article 1 section 3 and U.S.C.A. 14th to S.C. 1976 Code of law §24-13-40. The 25 year armed robbery sentence imposed on 9-24-2008, shall be reckoned from the date of imposition of that sentence, in which SCDC failed to do or comply with, and Appellant is to be given full credit. SCDC calculating Appellants start date for the 25 year armed robbery sentence imposed on 9-29-2008 from 12-18-2006 is arbitrary, capricious and manifestly contrary to S.C. 1976 Code of law §24-13-40, and is not giving Appellant full credit for the time he has served against the newly imposed 25 year sentence for armed robbery, making SCDC calculation In ROA page 145 Exhibit #1 and ROA page 6-11 Ex #2 incorrect 25 year armed robbery sentence imposed on 9-24-2008 has expired on 3-18-23. Appellant's 5 year consecutive sentence for Pwidcv Id in ROA page 173 imposed on 9-24-2008 under Indictment 2002-GS-23-1063

is an illegal sentence imposed on 9-24-2008 in violation of S.C. Const. article I section 12 and U.S.C.A 5th/14th Double Jeopardy clause against second prosecution for same offense after Conviction and multiple punishments for the same offense. North Carolina v Pearce, 395 US. 711, Benton v Maryland 395 US. 784. SCDC is aware that reference to Appellants 1st trial and Conviction under Indictment 2002-GS 23-1063 of October 25 2002 (Id in ROA pgs 14-15,) in which Appellant received 30 yrs for armed robbery and 5 years concurrent for PWDCVC; that Appellant complete that 5 year Concurrent sentence for PWDCVC on 12-18-2006 and had expired as of 12-18-2006. The only sentence Appellant was being held under Indictment 2002-GS-23-1063 Oct. 25 2002 Conviction for, is the 30yr armed robbery sentence that he had to finish doing the remainder of that sentence, minus the time he had already served from 12-19-01 to the date S.C. Supreme Court granted Appellant a new trial on January 14, 2008 in Watkins v. State, 2008-MO-001. SCDC released Appellant on Feb. 6, 2008 into the custody of Greenville County Detention Center.

12-19-01 to Feb. 6. 2008 is how much time Appellant had served on the 30 year armed robbery sentence before he was released on Feb 6, 2008. on 9-24-2008 he was retried and convicted a second time. in which he was entitled to

9 months, 5 days, 6 years credit for time served. But only could be retried and convicted for the armed robbery offense, not the pwidcve offense. So for SCDC to use the 5 year concurrent sentence imposed on October 25, 2002 under Indictment 2002-GS-23-2063 that Appellate has already enacted the time for, and not subtract the time Appellant has already served from the 5 years consecutive sentence imposed on 9-24-2008, and use that already served sentence to calculated the time the 25 year armed robbery sentence begins, is a violation of the Double jeopardy clause, subjecting Appellant to multiple punishments. By calculating Appellant time served or the end date of which Appellant has served the 5 year Concurrent sentence imposed on Oct. 25 2002 to end on 12-18-2006. is not giving Appellant credit for the time he has served from 12-19-01 to 9-24-2008 as required by S.C. 1976 Code of law §24-13-40. It is an obuse of SCDC discretion and an arbitrary and carpicious manifestly contrary to S.C. 1976 Code of law §24-13-40 to begin the 5 year consecutive sentence imposed on 9-24-2008, from 12-19-01, because S.C. 1976 Code of law § 24-13-40 requires that the 5 year consecutive sentence for pwidcve, be reckon from the date of imposition of that sentence, which is 9-24-2008

It doesn't provide how to calculate a consecutive sentence: where the terms of a statute are clear, the court must apply those terms according to their literal meaning. Paschal v State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope. Durham v United Companies financial Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). See Fd in R.O.A page 18-21 Respondents Brief, exhibit #2 ... Judge is expanding the statutory provisions of SC 1976 Code of law §24-13-40 based on its interpretation of S.C. 1976 Code of law §24-13-40 and the administrative law Court Judge Anderson is abusing his discretion, and his decision is arbitrary and capricious and manifestly contrary to SC. 1976 code of law §24-13-40 In his order Fd on R.O.A. page 1-5. Exhibit #1 ... The 5 year consecutive sentence is to be reckoned from 9-24-2008 in which under section §16 23-495 is a Mandatory 5 years day for day penalty.. 9-24-2008 + 5 years = 9-24-2013 its not 85% percent, it's day for day. So it can't be calculed with the 25 year armed robbery sentence as follows 25 yrs + 5 years = 30 years the 85% percent law

§24-13-150(A) can not be applied to §16-23-490 of S.C. 1976 Code of Law. On Id in R.O.A page 8-9 Exhibit "2", Respondent Brief. SCDC claims that Jail time credit is counted once toward the string of sentences, that §24-1-30 charges SCDC with carrying and S.C. Code Ann §24-13-40. As such, the agency's interpretation of this statute is entitled to deference..... SC. 1976 Code of law §24-13-40 doesn't authorized that Jail time credit is counted once toward the string of sentences. This is arbitrary and carpicious and manifestly contrary to S.C. 1976 code of law §24-13-40 and an abuse of SCDC discretion and Judge Anderson's discretion for relying on SCDC argument in its Respondent's brief.

The 5 year concurrent sentence imposed on 9-24-2008 = 9-24-2013 minus 9 months 5 days, 6 years, equals a max out date of 12-18-2007. If SCDC calculates that the 5 year consecutive sentence imposed on 9-24-2008 Id in R.O.A page 16-17 Exhibit "3" case was served in tolled and ended based upon the October 25 2002 conviction for the same offense, that begun on 12-19-01 and ended on 12-18-2006 Id in R.O.A page 14-15 Exhibit "3". Then SCDC is not actually giving Appellant the...

time he has already served against the 5 year consecutive sentence imposed on 9-24-2008 as required by SC 1976 Code of Law §24-13-40. Because in order to give appellant credit for time served, SCDC must subtract the time served from the new 5 year consecutive sentence imposed, that will leave Appellant with 0 time to serve for the 5 year consecutive sentence imposed on 9-24-2008; and Appellate has pursuant to §24-13-40 in reference The 25 year armed robbery sentence imposed on 9-24-2008, pursuant to §24-13-40 has expired on 3-18-23..

Conclusion

In conclusion, based on the facts and supporting laws and evidence presented. Appellant seek relief as this court finds appropriate, that will require SCDC to immediately release Appellant on grounds that, pursuant to S.C. 1976 Code of law §24-13-40, Appellant sentences under indictment 2002-GS-23-1063 September 24, 2008 25 year armed robbery Sentence and 5 year consecutive sentence has expired. and the administrative law court Judge Anderson III order was arbitrary and capricious and is Manifestly contrary to S.C. 1976 Code of law §24-13-40 and an abused of his discretion violating Appellant Due process and equal Protection of right to SC 1976 Code of law §24-13-40. The 5 year consecutive Sentence for violation of SC 1976 Code of law §16-23-490 imposed on July 24, 2008 is in violation of the Double Jeopardy Clause of SC Const article I section 12 USCA 5th Amt. against a second prosecution for same offense after conviction, and against multiple punishments and therefore should be vacated.