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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

ALC Case No. 23-ALJ-04-0003-AP
Appellate Case No. 2023-001384

Ronald Ceo, #258464,Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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November 2, 2023

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STATEMENT OF ISSUES ON APPEAL

WHETHER THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE AGENCY'S DECISION THAT COMMUNITY SUPERVISION IS STATUTORILY REQUIRED BECAUSE HOMICIDE BY CHILD ABUSE IS A NO-PAROLE OFFENSE.

STATEMENT OF THE CASE

This case is before the Court pursuant to the appeal of Ronald Ceo (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “the Department”). Appellant filed a Step One Grievance on September 9, 2022, requesting to have the requirement of Community Supervision Program (“CSP”) removed from his sentence. Appellant asserted that neither his sentencing sheet nor transcript mentioned CSP and that requiring Appellant to complete CSP would be a due process violation. This grievance was investigated and denied on October 3, 2022. Thereafter, on October 4, 2022, Appellant filed a Step Two grievance again alleging that neither his sentencing sheet nor transcript indicated that CSP was part of his sentence and alleged that requiring him to complete CSP would be a due process violation. This grievance was investigated and denied on November 30, 2022. Appellant subsequently filed his Notice of Appeal with the Administrative Law Court (“ALC”). Thereafter, the appeal in the ALC went forward, and on August, 15, 2023, the Honorable Deborah Brooks Durden, issued an order affirming the decision of the SCDC. This appeal followed.

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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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. § 1-23-610(B)

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

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE AGENCY'S DECISION THAT COMMUNITY SUPERVISION IS STATUTORILY REQUIRED WHERE HOMICIDE BY CHILD ABUSE IS A NO-PAROLE OFFENSE.

In this case, the ALC properly affirmed the decision of the Department of Corrections, because Appellant's is sentenced to a "no parole offense" and he is therefore required to participate in the community supervision program ("CSP") upon release from prison.

On May 25, 1999, Appellant plead guilty to Homicide by Child Abuse in violation of S.C. Code Ann. § 16-3-85 (A)(1) and was sentenced to thirty-five years imprisonment. *Rec. pp.* . The Code provides that "... any sentence for a 'no-parole offense' as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. ..." S.C. Code Ann. § 24-21-560 (A). Homicide by Child Abuse is a no-parole offense. *See* S.C. Code Ann. § 24-13-100 (identifying "no-parole offenses" as those offenses that are exempt from classification as enumerated in Section 16-1-10(d) and is punishable by twenty or more years); *see also* S.C. Code Ann. § 16-1-10 (D) (listing causing the death of a child by abuse or neglect pursuant to § 16-3-85 (C)(1)¹ as exempt from classification"). Appellant plead guilty to homicide by child abuse in violation of section (A) (1) of § 16-3-85. *Rec. pp.* . The penalty portion for section (A) (1) of § 16-3-85 is found in subsection (C)(1) and states, "[h]omicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse: (1) under subsection (A)(1) may be imprisoned for life but not less than a term of twenty years. ..." *See* S.C. Code Ann. § 16-3-85 (C)(1). Therefore, Appellant's sentence

¹ The code previously identified homicide by child abuse pursuant to subsection (B) (1) as exempt. *See generally* 1993 Act No. 184, §1 (regarding S.C. Code Ann. § 16-1-10 (D)). Additionally, the sentencing portion for homicide by child abuse was found in section (B) (1) in the 1992 version of the S.C. Code Ann. §

for homicide by child abuse is a no-parole offense. *Rec. pp.* . Because Appellant’s conviction is for a no-parole offense, Appellant is statutorily required to participate in the CSP upon completion of the incarcerative portion of his sentence. *See* S.C. Code Ann. § 24-21-560 (A); *see also Rec. pp.* .

Because CSP is statutorily required, it is of no consequence that it was not mentioned during sentencing or on the sentencing sheet. In fact, CSP is a collateral consequence of a sentence that need not be specifically disclosed to a defendant prior to a plea.² *See Jackson v. State*, 349 S.C. 62, 64, 562 S.E.2d 475, 475-76 (2002). SCDC is confined to an unambiguous sentencing sheet, and Appellant’s sentencing sheet unambiguously states that Appellant plead guilty to homicide by child abuse – a no-parole offense requiring CSP. *See Rec. pp.* ; *see also Tant v. S. Carolina Dep’t of Corr.*, 408 S.C. 334, 759 S.E.2d 398 (2014), *reh’g denied* (July 10, 2014).

Moreover, SCDC has no control over Appellant’s participation in the CSP. SCDC notifies the Department of Probation, Parole, and Pardon Services of the projected release date of inmates serving sentences for no-parole offenses one hundred eighty (180) days in advance of the inmate’s release to the CSP. *See* S.C. Code Ann. 24-21-560 (F). However, the Department of Probation, Parole, and Pardon Services is responsible for the operation of the CSP and for actual supervision of offenders on CSP. *See* S.C. Code Ann. 24-21-560 (A). Therefore, technically, this issue is not ripe for review at this time. *Waters v. South Carolina Land Resources Conservation Comm’n*, 321 S.C. 219, 227, 467 S.E.2d 913, 917-18 (1996) (“A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.”).

16-3-85. *See generally* 1992 Act No. 412, § 2.

² Significantly, whether Appellant was informed of certain consequences of his plea would be a post-conviction relief issue, not a matter for the Administrative Law Court.

Regardless, because Appellant's conviction for homicide by child abuse is a no-parole offense, he is required by statute to participate in CSP. Accordingly, the Administrative Law Court's August 15, 2023, Order should be affirmed. *See Rec. pp. .*

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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