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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph K. Anderson, III

ALC Case No. 22-ALJ-04-0297-AP
Appellate Case No. 2023-000603

ROBERT WATKINS, # 243803,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Robert Watkins, an inmate in the custody of the South Carolina Department of Corrections (SCDC). On May 30, 2022, Appellant filed a Step One grievance claiming the Department was incorrectly calculating his sentences. On August 20, 2022, Appellant's Step One grievance was investigated and denied. Thereafter, on September 9, 2022, Appellant filed a Step Two grievance. This grievance was investigated and denied on September 30, 2022. Appellant appealed to the Administrative Law Court on November 8, 2022. On March 30, 2023, Administrative Law Judge Ralph King Anderson, III, issued an Order finding that the Department had correctly calculated Appellant's sentences. This appeal follows.

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.

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 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 CONCLUDED THAT THE DEPARTMENT IS CORRECTLY CALCULATING APPELLANT'S SENTENCES.

Appellant asserts that SCDC has incorrectly calculated his sentences. He claims that SCDC has incorrectly interpreted S.C. Code 24-13-40 (the jail time statute), that SCDC has structured his sentences incorrectly, that his second sentence (following the grant of PCR) for possession of a weapon during commission of a violent crime is "illegal due to double jeopardy violations,"[1] and that his sentence is expired. Appellant assertions are all without merit.

Appellant was arrested on December 19, 2001, for armed robbery and possession of a weapon during the commission of a violent crime. (R. p. ___). On October 25, 2002, Appellant was convicted of these offenses and sentenced to thirty years for the armed robbery and five years, concurrent, for the weapons offense. (R. p. ___). Several years later, Appellant's convictions and sentences were reversed and remanded following his successful post-conviction relief (PCR) action. (R. p. ____). Appellant was tried and convicted a second time on September 24, 2008. (R. p. ____). This time, the judge sentenced Appellant to twenty-five years for armed robbery and five years, consecutive, for the weapons offense. (R. p. ____).

Pursuant to S.C. Code § 24-3-40 Appellant is entitled to be given credit for time served prior to trial and sentencing. S.C. Code § 24-1-30 charges SCDC with carrying out S.C. Code § 24-13-40. As such, the agency's interpretation of this statue is entitled to deference. Dunton v. S.C. Bd. Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful

[1] Any argument that his sentence was "illegal" or violates double jeopardy is a matter for direct appeal or post-conviction relief, not an argument for the ALC. Furthermore, the ALC did not rule on these arguments, so they are not preserved for review. See, e.g., State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004)

consideration and will not be overruled absent compelling reasons") (*citing* Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986)).

Appellant is receiving credit for all of the time he served prior to his second sentencing proceeding because his sentence start date is December 19, 2001 – the date of his original arrest. (See R. p. ___). This also gives him credit for all the time he served in prison before he was tried and convicted the second time after his PCR was granted. To the extent Appellant is arguing he should have additional credit, Respondent unable to make sense of this argument.

Appellant was clearly given a consecutive sentence in his second sentencing proceeding, and it makes no difference which sentence runs first or last, since neither offense is parole eligible. Appellant is required to serve the same amount of time on each offense regardless of which runs first or last. However, SCDC's practice, per the logic of Major v. S.C. Dept. of Prob. Parole & Pardon Servs., 384 S.C. 457, 682 S.E.2d 795 (2009), is to run the weapon offense sentence first since it is a day-for-day offense. See S.C. Code Ann. §16-23-490 (c) (". . . . [t]he five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this time[2]. . ."). The Major case stated that "a notation that a sentence is 'consecutive,' for sentencing purposes, does not necessarily delineate that the particular sentence has to run last. It merely indicates that all the sentences are to run successively, and not to run at the same time.... Therefore, despite the fact that the weapons sentence was the last one imposed and it was denoted as "consecutive" there was no indication that the weapons sentence was to be the last sentence to be served." Major v. S.C. Dept. of Prob. Parole & Pardon Servs., 384 S.C. 457, 469, 682 S.E.2d 795, 801 (2009). Structuring the

("Arguments not raised to or ruled upon by the trial court are not preserved for appellate review.").

[2] This language means that inmates serving day-for-day time under this statute can earn good time and work

weapon offense sentence first ensures that community supervision follows the 85% armed robbery sentence, as is required by law.[3]

Regarding the specific calculations, five years from December 19, 2001 is December 18, 2006, which is the start date for the twenty-five-year armed robbery sentence. (R. p. ___). As stated above, the armed robbery offense is an 85%, "no parole" offense under S.C. Code 24-13-100 since it is a Class A felony punishable by twenty years or more. See S.C. Code 16-1-90(A). Accordingly, Appellant is required to serve at least eighty-five percent of the twenty-five-year sentence. See S.C. Code Ann. §24-13-150 (A) ("Notwithstanding any other provision of law ... an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections ... is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed."). Eighty-five percent of twenty-five years is equivalent to twenty-one years, two months, and twenty-nine days. (R. p. ___). Adding this amount of time to December 18, 2006 results in the date of March 18, 2028. However, there are six leap years in between the sentence start date and the release date, so Appellant's release date is six days earlier on March 12, 2028. (R. p. __).

Based upon the above, the Department has correctly calculated Appellant's sentences, and the Administrative Law Court's decision affirming the Department should be upheld.

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credits towards *other sentences* that the inmate is concurrently serving.

[3] Community supervision is required for all 85% offenders. See S.C. Code 24-21-560 ("(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, 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.").

CONCLUSION

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

Respectfully submitted,

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