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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 Crystal M. Rookard

ALC Case No. 22-ALJ-04-0141-AP
Appellate Case No. 2023-001546

DARRELL L. GOSS, # 305517,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY CONCLUDED THAT THE DEPARTMENT IS CORRECTLY CALCULATING APPELLANT'S EIGHTY-FIVE PERCENT NO-PAROLE SENTENCES WHERE THE STATUTE SAYS THAT 85% OFFENDERS MUST SERVE "AT LEAST" EIGHTY-FIVE PERCENT.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Darrell Lee Goss (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On March 7, 2022, Appellant filed a Step 1 Grievance arguing that his maxout date was incorrect. This grievance was investigated and denied. On March 24, 2022, Appellant filed a Step 2 Grievance, which was also investigated and denied. On May 9, 2022, Appellant filed a Notice of Appeal in the Administrative Law Court (ALC). On September 15, 2023, Judge Crystal M. Rookard issued an Order affirming the Department's calculation of 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 EIGHTY-FIVE PERCENT NO-PAROLE SENTENCES WHERE THE STATUTE SAYS THAT 85% OFFENDERS MUST SERVE "AT LEAST" EIGHTY-FIVE PERCENT.

Background

There are statutes that require day-for-day service of sentences. See, e.g., S.C. Code § 16-3-20(A). There are statutes that require a mandatory minimum amount of time to be served on a sentence. See, e.g., S.C. Code § 16-11-330(A). There are statutes that require service of a life without parole sentence. See, e.g., S.C. Code § 17-25-45. There are statutes that require service of "at least 85%" before eligibility for release. See S.C. Code § 24-13-100 and -150. However, there are no statutes that require service of any less than 100% of a sentence. An inmate should expect to serve 100% of any sentence he or she receives because there is no statutory mechanism by which a sentence is **automatically** reduced. Although work and earned education credits are permitted by statute, they are not mandated - they must be earned. See S.C. Code 24-13-230(A) (stating that SCDC "may" allow a non-85% inmate a reduction in the term of his sentence of zero to one day for every two days he is assigned to a productive duty assignment or regularly enrolled in academic, technical, or vocational program); see also S.C. Code 24-13-230(B)(stating that SCDC "may" allow an 85% inmate a reduction in the term of his sentence of six days for every month he is assigned to a productive duty assignment or regularly enrolled in academic, technical, or vocational program).

Significantly, section (B) also states as follows: **"No prisoner convicted of a "no parole offense" is entitled to a reduction below the minimum term of imprisonment provided in Section 24-13-125 or 24-13-150."** S.C. Code 24-13-210(B)(emphasis added). Of course, as mentioned above, the minimum term provided in S.C. Code 24-13-150 is "at least eighty-five

percent." S.C. Code 24-13-150.

Similarly, although good time credits are also permitted by statute, they are dependent on an inmate's behavior. See S.C. Code 24-13-210(A) (stating that non-85% inmates are entitled to a deduction of twenty days per month served if his record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior); see also S.C. Code 24-13-210(B) (stating that 85% inmates are entitled to a deduction of three days per month served if his record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior).

Like the work credit statute discussed above, section (B) of the good time statute also states as follows: "**No prisoner convicted of a "no parole offense" is entitled to a reduction below the minimum term of imprisonment provided in Section 24-13-125 or 24-13-150.**" S.C. Code 24-13-210(B)(emphasis added). S.C. Code 24-13-150. Again, the minimum term provided in S.C. Code 24-13-150 is "at least eighty-five percent." S.C. Code 24-13-150.

A max-out date is originally calculated with the assumption that an inmate will earn the full amount of good time credits and a certain amount of work credits, depending upon the type of offense. When an inmate fails to earn the initially projected amount of credit, or loses credit due to disciplinary infractions, the inmate's max-out date changes accordingly. By the same token, the inmate's max-out date can change to an earlier date if an inmate earns more work credits and/or education credits than originally calculated. Max-out dates can change multiple times throughout an inmate's stay due to disciplinary convictions, changing jobs, quitting a job, earning bonus education credits, etc. For 85% offenders, SCDC initially projects that the offender will earn the maximum amount of good time permitted by law (three days per month) and the maximum amount of work and

education credits permitted by law (six days per month). If an 85% offender loses good time credit due to his behavior or fails to work a consistent job or changes jobs frequently, this will impact his max-out date, and he will serve more than 85% of his sentence.

Appellant's 85% Sentences

In this case, it is undisputed that Appellant's sentences are 85%, no-parole offenses. However, Appellant incorrectly argues that there is a "statutory requirement" that he serve **only** 85% of his sentence. In fact, as mentioned above, what the statute actually says is, in relevant part, as follows:

> (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, 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, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, 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**. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

S.C. Code § 24-13-150(A) (emphasis added).

As explained by the lower court, Appellant must serve at least 85% of his twenty-year sentences. (See ALC Order, p. 3). 85% of twenty years is seventeen years. With a start date of June 15, 2007 (date of sentencing minus jail time credit), the earliest Appellant could be released (i.e., at **exactly** 85% service) would be June 15, 2024. (See ALC Order, p. 3). However, Appellant has acquired numerous disciplinary convictions in his time with SCDC. (ALC Order p. 3-4). As a result, he forfeited the credit he would have earned each month he had an infraction (three days per

month, per statute), and he also had good time taken away as punishment for some of the offenses. (See ALC Order, p. 3-4; see Disciplinary Screens; see also SCDC Policy OP-22.14, Section 17.2, found at https://www.doc.sc.gov/sites/doc/files/Documents/policy/OP-22-14.pdf (stating that loss of accrued good time may be imposed in varying amounts depending upon the level of the infraction and that a finding of guilt as a result of a disciplinary hearing will result in the inmate's failure to earn good time for the month in which the disciplinary offense occurred). Appellant has also had breaks in his work history, which means he was not earning credits during the time frames he was not working. (See Work History Screens).

Accordingly, due to Appellant's loss of credits – again, which are used to reduce the service time from 100% to at least 85% - he is serving slightly more than 85% of his sentence.[1] Contrary to his argument, this does not violate S.C. Code 24-13-150 because this statute says he must serve "at least" 85% of the sentence. Accordingly, this Court should affirm the ALC's conclusion that Appellant failed to establish any error in the Department's calculation of his sentences.

[1] As pointed out in Appellant's Brief at page 9, Appellant's current maxout date is July 15, 2024. He had good time credit restored under SCDC's Good Time Restoration Policy. (See ALC Order, p. 4)

CONCLUSION

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

March 13, 2024