STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Curtis Johnson, #337543, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 23-ALJ-04-0395-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Curtis Johnson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant challenges the Department's calculation of his sentence-related credits and his max out date.

BACKGROUND

On November 20, 2006, Appellant was arrested and placed in custody for four offenses: one count of voluntary manslaughter, two counts of assault and battery of a high and aggravated nature (ABHAN), and one count of possession of a weapon during the commission of a violent crime (possession of a weapon). On October 21, 2009, Appellant was tried and convicted of all four offenses. He was sentenced to thirty years' incarceration for voluntary manslaughter, ten years' incarceration for each conviction of ABHAN, and five years' incarceration for possession of a weapon. Pursuant to the sentencing sheets, Appellant's conviction for possession of a weapon is the only sentence ordered to be consecutive. Therefore, Appellant's sentences for voluntary manslaughter and ABHAN run concurrently. In addition, the sentencing sheets indicate Appellant's sentence start date for all four convictions was October 21, 2008. The sentencing sheets also indicate Appellant was to be given credit for time served (jail time credit) pursuant to section 24-13-40 of the South Carolina Code (Supp. 2023). to be calculated and applied by the Department.

On June 27, 2023, Appellant filed a Step 1 Grievance alleging his jail time credit was not properly applied. The Department denied his Step 1 Grievance on July 6, 2023. Appellant then filed a Step 2 Grievance, which was also denied. In its denial of the Step 2 Grievance, the Department stated Appellant's max out date of May 13, 2037, was correct. On October 3, 2023.

Appellant filed a Notice of Appeal with the Court, in which he asserts his jail time credit should be applied to both of his consecutive sentences[1] and his max out date corrected. The case was assigned on October 20, 2023. The Department filed the Record on Appeal on January 2, 2024. Appellant filed his brief on January 12, 2024.[2] The Department filed its brief on February 8, 2024.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Al-Shabazz*, the court held the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382; 527 S.E.2d at 757.[3] Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2023) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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[1] Appellant appears to be referring to his sentences for possession of a weapon and voluntary manslaughter.

[2] Appellant attached documents to his brief to support his appeal. However, these documents are not part of the Record on Appeal. Rule 65 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) sets forth that "[t]he Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." Since the documents attached to Appellant's brief do not appear in the Record, they will not be addressed by the Court. *See id.*; S.C. Code Ann. § 1-23-380(4) (Supp. 2023) ("The review must be conducted by the court and must be confined to the record.").

[3] In *Sullivan v. South Carolina Department of Corrections*, the Supreme Court also found that other conditions of confinement could potentially implicate state-created liberty interests. 355 S.C. 437, 586 S.E.2d 124 (2003). However, those interests are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 442, 586 S.E.2d at 126 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

(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) (Supp. 2023).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant asserts his jail time credit should be applied to both of his consecutive sentences and thus requests his max out date be corrected to reflect his credit for time served. However, the Department asserts Appellant's jail time credit has been properly applied and his max out date has been correctly calculated. Specifically, the Department argues Appellant's sentence for possession of a weapon runs consecutively to his sentences for voluntary manslaughter and ABHAN, and his sentence for possession of a weapon is "a day for day" sentence that began the day Appellant was arrested: November 20, 2006. Thus, once Appellant's five-year sentence was completed, on or

around November 20, 2011, Appellant began serving his sentences for voluntary manslaughter and ABHAN. Voluntary manslaughter is a "no parole offense," and thus, Appellant is required to serve 85% of his thirty-year sentence. As a result, Appellant's projected max out date is May 13, 2037.

Absent any ambiguity in the sentencing sheet, the Court must presume that the sentencing court's sentence is correct. *See Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014) ("[T]he Department is generally confined to the face of the sentencing sheets in determining the length of a sentence. . . . [unless] there is an ambiguity in the sentencing sheets."). According to the sentencing sheets, Appellant is entitled to time served. The sentencing sheets also unambiguously state Appellant was sentenced to thirty years' imprisonment for voluntary manslaughter under section 16-3-50 and five years' incarceration for possession of a weapon under section 16-23-490. Although Appellant was also convicted of two counts of ABHAN, because these sentences run concurrently to the voluntary manslaughter conviction, which is a longer sentence, the sentence for voluntary manslaughter is controlling for the purpose of calculating Appellant's max out date.

Turning to the controlling statutes, section 16-3-50 provides that a person convicted of voluntary manslaughter "must be imprisoned not more than thirty years or less than two years." S.C. Code Ann. § 16-3-50. In addition, voluntary manslaughter is a Class A felony under section 16-1-90(A) of the South Carolina Code (Supp. 2023). "[A] class A, B, or C felony" is a "no parole offense."[4] S.C. Code Ann. § 24-13-100 (2007). Regarding no parole offenses, section 24-13-150(A) provides:

> (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 . . . **is not eligible for early release, discharge,**

[4] In reviewing this case, the Court considered whether the South Carolina Court of Appeals' decision in *Bolin v. South Carolina Department of Corrections* applied. 415 S.C. 276, 781 S.E. 2d 914 (Ct. App. 2016). In *Bolin*, the Court of Appeals held the amended version of section 44-53-375(B) (pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010) repealed section 24-13-100 to the extent section 24-13-100's classification of no-parole offenses conflicted with the amended section's granting of parole eligibility. *Id.* at 286, 781 S.E.2d at 919. More specifically, the amended version of 44-53-375(B) made certain offenses parole-eligible that were previously classified as no-parole offenses under section 24-13-100. *Id.* Reviewing the legislative history of section 16-3-50 for the purposes of this case, it is clear that it has not been amended to include the repealing language at issue in *Bolin* such that Appellant's sentence is a parole-eligible conviction. Therefore, the application of *Bolin* to this case does not change the parole eligibility of Appellant's sentence and the Department correctly classified Appellant's conviction as a "no parole" offense.

> **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.** . . . Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (Supp. 2023) (emphasis added). Accordingly, because Appellant's voluntary manslaughter offense is a "no parole offense," he is required eighty-five (85) percent of his thirty-year sentence before being eligible for release from imprisonment.

Additionally, Appellant's conviction for possession of a weapon under section 16-23-490 requires a mandatory five-year sentence:

> (B) **Service of the five-year sentence is mandatory** unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run consecutively or concurrently.
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> © Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. **The 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 period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment.

S.C. Code Ann. § 16-23-490 (2015) (emphasis added). Thus, because Appellant's sentence for possession of a weapon is a mandatory five years and runs consecutive to his conviction for voluntary manslaughter, Appellant is required to serve at minimum five years' incarceration for the weapon conviction and then eighty-five percent of his thirty-year sentence for voluntary manslaughter. § 16-23-490; § 24-13-150(A). Eighty-five percent of thirty years is twenty-five years and six months. Therefore, in total, Appellant must serve, at minimum, thirty years and six months.

Next, the Department must give Appellant credit for jail time served when calculating Appellant's max out date. Section 24-13-40 of the South Carolina Code (Supp. 2023) provides, in pertinent part:

> In every case in computing the time served by a prisoner, full credit against the sentence must 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.

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.* In this case, neither exception to section 24-13-40 applies to Appellant. Although Appellant was not convicted until October 21, 2009, under section 24-13-40, Appellant is entitled to jail time credit starting when he was arrested and placed in custody on November 20, 2006. As a result, Appellant's max out date is calculated from November 20, 2006. Appellant's five-year sentence for possession of a weapon ran first because it was a day-for-day sentence. *See* S.C. Code Ann. § 16-23-490 (2015). Five years from November 20, 2006 is November 20, 2011. Thus, Appellant's thirty-year sentence for manslaughter began running, for which he is required to serve eighty-five percent or twenty-five years and six months, started on November 20, 2011. Twenty-five years and six months from November 20, 2011, is May 13, 2037. Therefore, the Department has correctly applied Appellant's jail time credit to his sentence.

In sum, Appellant failed to carry his burden of proving the Department improperly calculated his sentence and the Department's decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding "the party challenging [an administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.").

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

February 27, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

February 27, 2024
Columbia, South Carolina