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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal From The Administrative Law Court, Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2023-001546

DARRELL L. GOSS,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

FINAL BRIEF

DARRELL L. GOSS # 305517
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512
APPELLANT, PRO SE

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STATEMENT OF ISSUE ON APPEAL

Did the ALC err in affirming SCDC's calculation of Appellant's prison sentence and determination of his projected release date that exceeds the statutory requirement of eighty-five percent ?

STATEMENT OF THE CASE

On June 15, 2007, Darrell L. Goss ("Goss") was arrested and charged in connection with a robbery at a clothing store in North Charleston. He was held in the Charleston County Detention Center until his trial on February 23-26, 2009, where he was convicted. At sentencing, the judge sentenced Goss to twenty (20) years imprisonment, giving him credit for the time spent in the county jail. Goss was transferred to the South Carolina Department of Corrections ("SCDC") on March 3, 2009 where he began serving his sentence.

On February 1, 2023, Goss submitted a Kiosk request to Classification stating that his maxout date of September 13, 2025 was incorrect. He stated his maxout date should be June 15, 2024. Goss further allege that his earned work and good behavior credits weren't properly applied to his sentence. On March 2, 2023, Classification responded to Goss's request stating " your maxout date was never June 2024". Goss then filed a step 1 grievance reiterating his claims. On March 22, 2023, the Warden responded stating Goss was receiving his work credits but not good time credits because he is serving a 85% sentence and had to complete a mandatory 17 years before he could be released. Goss filed a step 2 grievance wherein he clarified that June 15, 2024 would be 17 years of his sentence but that his maxout date was September 13, 2025. On April 26, 2023, SCDC rendered its final decision stating that Goss was receiving his work and good time

credits but that " there is no evidence and/or documentation indicating that your maxout date was previously schedule for June 2004". SCDC further stated that due to 39 disciplinary convictions, Goss is serving more than 17 years because of the loss of good time and work credits.

On May 9, 2003, Goss filed a notice of appeal with the Administrative Law Court ("ALC"). The case was assigned on May 19, 2003. On September 9, 2003, SCDC filed a motion to dismiss. On September 12, 2003, Goss filed a response in opposition of the motion to dismiss. On September 28, 2003, the ALC denied SCDC's motion to dismiss and granted Goss's motion to reconsider. SCDC subsequently filed a motion to supplement the record with a copy of Goss's good time restore history screen which the court granted on September 28, 2003. Goss filed his brief on October 11, 2003. On October 11, 2003, Goss also filed a motion to supplement the record to include his certificates of completion of programs. SCDC filed its brief on November 28, 2003. Goss did not file a reply.

The case was re-assigned on July 7, 2003. On July 30, 2003, the ALC in a written letter to SCDC, stated " Initially, the Record shows Appellant's max out date as September 12, 2003. How did SCDC arrive at the max out date October 15, 2005? The Department's brief does not explain this change". On August 17, 2003, SCDC responded to the ALC's letter correcting the ALC's statement of Goss's max out date from September 12, 2003 to September 12, 2005, and explained that that date was adjusted to October 15, 2004 once

an "error" was found. SCDC further explained that "since the filing of the briefs, Appellant's projected maxout date has adjusted again due to changes in Appellant's rate of earned work credits. Appellant's maxout date is now July 15, 2024". On September 15, 2023, the ALC issued an order finding substantial evidence supporting SCDC's calculation of Goss's sentence and determination of his projected release date of October 15, 2024.

This appeal follows.

STANDARD OF REVIEW

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. Sanders v. S.C. Dep't of Corr., 379 S.C. 411, 417, 665 S.E.2d 231, 234 (Ct. App. 2008). Although the appellate court shall not substitute its judgment for that of the ALC as to findings of fact, it may reverse or modify decisions that are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. In determing whether the ALC's decision was supported by substantial evidence, the appellate court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. Id. This court's review of the ALC's order must be confined to the record provided on appeal. S.C. Code § 1-23-610(B). Furthermore, the burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

ARGUMENT

The ALC err in affirming SCDC's calculation of Appellant's prison sentence and determination of his projected release date that exceeds the statutory requirement of eighty-five percent.

Appellant was sentenced to twenty (20) years in prison for armed robbery, kidnapping, and assault and battery with intent to kill. His sentence began running June 15, 2007. Under state law, Appellant is required to serve 85 percent of his sentence in prison, and then he is release to the Department of Probation, Parole and Pardon Services (DPPPS) where Appellant must complete two (2) years in the community supervision program (CSP). S.C. Code § 24-13-150(A), § 24-21-560(A),(B). SCDC must notify the DPPPS of Appellant's "projected release date" six (6) months in advance of his release to the CSP. S.C. Code § 24-21-560(F). Thus, SCDC is task with the responsibility of properly calculating Appellant's sentence, or else, he risk an extended period of incarceration beyond that which is required by law.

Such is the case here.

S.C. Code § 24-13-150 provides, in pertinent part:

(A) An inmate convicted of a "no parole offense" . . . 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 § 24-21-560 provides, in pertinent parts:

(A) Any sentence for a "no parole offense" . . . must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a "no parole offense" is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150.

(F) The Department of Corrections must notify the Department of Probation, Parole, and Pardon Services of the projected release date of any inmate serving a sentence for a "no parole offense" one hundred eighty days in advance of his

release to community supervision.

Appellant's convictions for armed robbery, Kidnapping, and assault and battery with intent to kill, are no parole offenses. S.C. Code § 24-13-100. Therefore, Appellant must serve 85% of his sentence before he is eligible for "early release, discharge, or community supervision". Bolin v. S.C. Dept. of Corrections, 415 S.C. 276, 781 S.E.2d 914 (2016). Eighty-five percent of 20 years is 17 years. Seventeen years from June 15, 2007 would be June 15, 2024. The ALC correctly found this date to be Appellant's "earliest possible release date". However, she erred in finding that the loss of good time credits resulted in SCDC recalculating Appellant's maxout date to October 15, 2024. R. pp. 47-48.

As a matter of first impression, Appellant point out to the Court that SCDC has erroneously recalculated his release date on at least four separate occasions. First, SCDC had Appellant's maxout date set at January 11, 2026 (i.e., 93% of his sentence). Second, it had his maxout date at September 19, 2025 (91% of his sentence). Third, it had Appellant's maxout at October 15, 2024 (87% of his sentence). And fourth, it currently has Appellant's maxout date set for July 15, 2024 (86% of his sentence). R. pp. 33-35; R. p. 46, fn. 1. Notably, SCDC has never correctly calculated Appellant's release date at June 15, 2024 (85% of his sentence). R. p. 2 ("your maxout date was never June 2024"); R. p. 5 ("Be advised that there is no evidence and/or documentation indicating that your maxout date was previously scheduled for June 2024").

Appellant contends the ALC erred by allowing SCDC to extend his sentence beyond the statutory requirement of 85 percent. SCDC did so by *negatively* applying (deducting) Appellant's good time credits, which violates the statutory mandate that the 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 ". Id. Appellant maintain that the calculation of his 85% period of incarceration must not include any *application* of credits, whether positive or negative — i.e., to increase or decrease Appellant's sentence. Sampson v. Ozmint, 2009 WL 1834378 (D.S.C.)(Plaintiff claim he was only required to serve eighty-five percent of his sentence, such that the granting or taking away of good time or work credits would not effect his release date).

To be sure, S.C. Code § 24-13-210 which governs the application of good time credits, provides, in pertinent parts :

> (E) Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program pursuant to Section 24-21-560. If the person is required to complete a community supervision

program, he must complete his sentence as provided in Section 24-21-560 prior to discharge from the criminal justice system.

(F) No credits earned pursuant to this Section may be applied in a manner which would prevent full participation in the Department of Probation, Parole and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560.

Appellant submits the plain language of § 24-13-210(F) provide that no good time credits can be applied to *prevent* him from being release to community supervision after Appellant has served his 85% period of confinement. State v. Grissett, 2024 WL 463630 (February 7, 2024)(When the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, the rules of statutory construction are unnecessary, and a court has no right to impose another meaning.)(citing, *Hodges* v. *Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

Appellant assert that his substantive due process rights were violated by the increase of his prison sentence. Hawkins v. Freeman, 195 F.3d 732 (4th Cir. 1999). Appellant has a liberty interest in his **mandatory** release from prison to the community supervision program after serving 85% of his sentence. And SCDC arbitrarily deprived Appellant of that interest

by extending his period of incarceration beyond eighty-five percent. SCDC's action amounts to an abuse of power or power employed as an instrument of oppression. Id.

CONCLUSION

For all the foregoing reasons, this Court should reverse the judgment of the ALC.

Respectfully Submitted,

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March 29, 2024