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SC Court of Appeals

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Wallace Glover, #231429,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Corrections,<br><br>Respondent. | ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) | Docket No. 22-ALJ-04-0322-AP<br><br><br><br>**ORDER** |

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a notice of appeal filed by Wallace Glover (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant contends the Department incorrectly calculated his sentence by mischaracterizing one of his convictions as a no-parole offense. For the reasons set forth below, the Department's decision is affirmed.

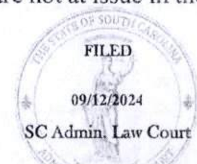
**BACKGROUND**

On March 22, 2017, Appellant pled guilty to manufacturing or trafficking of methamphetamine or cocaine base (PWID), third offense, in violation of subsection 44-53-375(B)(3) of the South Carolina Code (2018). Appellant was sentenced to ten years' imprisonment, which he began serving on December 3, 2016. The sentencing sheet indicates 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). Prior to this sentence, Appellant was convicted for (1) conspiracy to possess with intent to distribute cocaine on March 27, 1990, in the Western District of North Carolina; and (2) crack possession on August 4, 1997, in Aiken County, South Carolina.[1]

On August 16, 2022, Appellant filed a Step 1 Grievance challenging the Department's sentence calculation. Appellant argued that only violent offenders were required to serve eighty-five percent of their sentence, and because he was convicted of a nonviolent offense, this requirement did not apply to him. Appellant requested the Department to recalculate his sentence as a nonviolent offender. The Department denied Appellant's Step 1 Grievance, stating that

[1] The Record also reflects that Appellant was convicted of additional offenses; however, they are not at issue in the instant appeal.





Appellant was required to serve eighty-five percent of his sentence despite his offense being classified as nonviolent. The Department calculated his projected maxout date to be June 1, 2025. Appellant appealed this decision by filing a Step 2 Grievance on October 2, 2022, which the Department also denied.

Appellant then appealed the Department's decision to this Court on November 28, 2022.[2] On March 21, 2023, the Department filed a Motion to Enlarge Time to file the Record on Appeal, which was granted by the Court on March 28, 2023. Appellant filed his brief on March 23, 2023. The Department filed the Record on April 24, 2023, and then filed its brief on June 30, 2023.[3] The Department also filed a Motion to Supplement the Record (Motion to Supplement) requesting to include the following documents into the Record: (1) public information inmate data document (3 pages) and (2) prior commitments non-SCDC priors screen. Appellant filed a reply to the Department's brief on July 6, 2023.[4] The Department filed a sur-reply on July 17, 2023. On July 19, 2023, the Court granted the Department's Motion to Supplement.

## ISSUE ON APPEAL

Did the Department err in classifying Appellant as an eighty-five percent offender for purposes of his sentence calculation?

## STANDARD OF REVIEW

This Court's jurisdiction to hear inmate grievance matters is derived from the decisions 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). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. 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 § l-23-380). Subsection 1-23-380(5) states:

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[2] The case was reassigned to the undersigned judge on July 2, 2024.

[3] On June 9, 2023, Appellant filed a Motion to Grant Relief pursuant to SCALC Rule 62. Then, on June 16, 2023, the Department filed a response to the Motion as well as a Motion to Enlarge Time to file its brief. The Court granted the Motion to Enlarge Time on June 21, 2023.

[4] Appellant attached a one-page document to his reply. The document contains no caption indicating what case it is associated with. In addition, this document is not part of the Record on Appeal. SCALC Rule 65 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 document attached to Appellant's reply brief is not in the Record, it will not be addressed by the Court.

> 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:
>
> (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).

Thus, 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 argues that pursuant to *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E. 2d 914 (Ct. App. 2016), and because his offense is non-violent, he is only required to serve sixty-five (65) percent of his sentence. The Department argues his offense is a "no parole offense" and, thus, Appellant is required to serve 85% of his sentence.

The sentencing sheets in the Record reflect that on March 22, 2017, Appellant pled guilty to PWID, third offense, in violation of subsection 44-53-375(B)(3) and was sentenced to ten years'

incarceration.[5] 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."). Here, Appellant's sentencing sheet unambiguously states Appellant was sentenced to ten years for his violation of subsection 44-53-375(B)(3) and, thus, the Department was required to calculate Appellant's sentence pursuant to that section.

Inmates convicted of "no parole" offenses are required to serve eighty-five percent of their sentence before becoming eligible for early release, discharge, or community supervision. § 24-13-150(A) (2007 & Supp. 2023). South Carolina defines "no parole offenses" as class A, B, or C felonies carrying a maximum prison term of twenty years or more. S.C. Code Ann. § 24-13-100 (2007); *see also* S.C. Code Ann. § 16-1-90 (Supp. 2023) (outlining class A, B, or C felony offenses). Because a third PWID offense under subsection 44-53-375(B)(3) carries a maximum prison sentence of thirty years, it constitutes a "no parole" offense. S.C. Code Ann. § 24-13-100 (2007). Accordingly, because Appellant's offense is a "no parole offense," he is required eighty-five (85) percent of the sentence before being eligible for release from imprisonment. *See* § 24-13-150(A).

Nonetheless, Appellant argues his offense was classified as non-violent and thus, he should not be serving 85% of his sentence. Appellant's interpretation of the eighty-five percent service requirement as applicable to only violent offenders is misplaced. Violent offenses are statutorily defined by section 16-1-60 of the South Carolina Code (2015 & Supp. 2023). This classification is distinct from "85%" or "no parole" classification, which applies to "class A, B, or C felon[ies] . . . punishable by a maximum term of imprisonment for twenty years or more." S.C. Code Ann. § 16-1-20(A)(1) (2015 & Supp. 2023). Because Appellant's third PWID offense carries a maximum prison sentence of thirty years, it is a "no parole" offense.

Even so, the Court must also consider the South Carolina Supreme Court's decision in *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E. 2d 914 (Ct. App. 2016). In *Bolin*, the Supreme Court held the amended version of section 44-53-375(B) (pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010 or the "Act") repealed

[5] As addressed above, Appellant also had other convictions, but those offenses are not at issue in this case.

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. 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.* The Act specifically added the following language regarding penalties for PWID of methamphetamine, cocaine base, and other controlled substances under subsection 44-53-375(B):

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense **in which all prior offenses were for possession of a controlled substance pursuant to subsection (A),** may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

2010 Act No. 273, sec. 37, eff. June 2, 2010 (emphasis added).

Because Appellant was sentenced for a third PWID offense in 2017, the 2010 amendments to subsection 44-53-375(B) were in effect.. As emphasized in the bold language above, third and subsequent PWID offenders could become eligible for parole and/or a reduced sentence **only if** the offender's prior narcotic offenses were for simple possession. Simple possession is defined as "possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110." S.C. Code Ann. § 44-53-375(A) (2018).

Here, the Record indicates that Appellant was previously convicted for narcotic offenses that rose above the level of simple possession. Specifically, Appellant's prior commitment data from the National Crime Information Center indicates that he was convicted in federal court for conspiracy to possess with intent to distribute cocaine in excess of 500 grams on March 27, 1990. Accordingly, this conviction renders Appellant ineligible for a sentence reduction. *See* S.C. Code Ann. 44-53-375(A) (defining "possession" as "possessing less than one gram of methamphetamine or cocaine base"). Therefore, because section 24-13-150(A) controls, the Department correctly classified Appellant's conviction as a "no parole" offense.

Next, Appellant's sentencing sheet for PWID shows Appellant was to be given jail time credit pursuant to section 24-13-40. As a result of jail time credit, the Department calculated his

sentence start date as December 3, 2016. The Department then applied 85% to his ten-year sentence, resulting in a projected maxout date for Appellant of June 1, 2025.

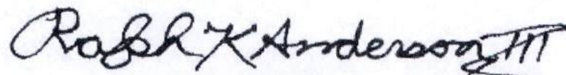
In sum, because the Record indicates that Appellant received a prior conviction rising above the level of simple possession under subsection 44-53-375(A), Appellant is ineligible for the eighty-five percent exemption in subsection 44-53-375(B). As such, the default "no parole" statute applies, and Appellant must serve eighty-five percent of his sentence. S.C. Code Ann. § 24-13-150(A) (2007 & Supp. 2023). Thus, Appellant failed to carry his burden of proving that SCDC 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**.

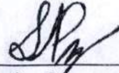


Ralph King Anderson, III
Chief Administrative Law Judge

September 12, 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

September 12, 2024
Columbia, South Carolina