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. 23-ALJ-04-0395-AP
Appellate Case No. 2024-000487

CURTIS JOHNSON, # 337543,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY CONCLUDED THAT THE DEPARTMENT IS CORRECTLY CALCULATING APPELLANT'S SENTENCES.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Curtis Johnson, an inmate in the custody of the South Carolina Department of Corrections (SCDC). On June 27, 2023, Appellant filed a Step One grievance claiming the Department was incorrectly calculating his sentences. On July 6, 2023, Appellant's Step One grievance was investigated and denied. Thereafter, Appellant filed a Step Two grievance, which was also investigated and denied. Appellant appealed to the Administrative Law Court on October 3, 2023. On February 27, 2024, 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:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
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> (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 appears to assert in his Brief that he should receive his jail time credit – a total of 1,066 days – four separate times because he has four convictions, one of which is consecutive. (See Brief of Appellant, page 7). For the reasons discussed below, Appellant's argument is without merit, and the Department has correctly calculated Appellant's release date.

On October 21, 2009, Appellant was convicted of voluntary manslaughter, two counts of assault and battery of a high and aggravated nature (ABHAN), and possession of a weapon during the commission of a violent crime. (See Sentence Sheets.) He was sentenced to thirty years for voluntary manslaughter, ten years for each count of ABHAN, and five years for the possession of a weapon offense. (See Sentence Sheets.) All sentences were concurrent except the weapon offense, which was ordered to run consecutively. (See Sentence Sheets).

SCDC's practice, per 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. . ."). 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 weapon offense sentence first ensures that community supervision follows the 85% voluntary manslaughter sentence, as is required by law.[1]

Respondent is required by S.C. Code 24-13-40 to apply jail time credit to Appellant's sentence. When consecutive sentences are involved, any jail time credit is applied at the beginning of the "string" of sentences. "Consecutive" means that sentences run successively and that the consecutive sentence cannot run at the same time as the other sentence. See Major, *supra*. Thus, the consecutive sentence cannot begin any earlier than the date that the first sentence is completed.

Here, it is undisputed that Appellant had a total of 1,066 days of jail time credit. His sentence date was October 21, 2009, so applying the jail time credit of 1,066 days backs up his sentence start date to November 20, 2006. Pursuant to the Major case, the Department is running Appellant's five-year sentence for possession of a weapon first. This sentence began on November 20, 2006, and ended on November 19, 2011. Appellant's thirty-year sentence for voluntary manslaughter then began on November 19, 2011.[2] Voluntary manslaughter is an 85%, no parole offense under S.C. Code 24-13-100 and -150. Therefore, the minimum amount of time Appellant would have to serve on his voluntary manslaughter offense is 85% of thirty years, which is twenty-five years and six months. Twenty-five years and six months from the start date of November 19, 2011, is May 19, 2037. Appellant's current maxout date is May 13, 2037, which is earlier than May 19, 2037 because it takes into account leap years.

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[1] 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.").

[2] The two concurrent sentences for ABHAN have already expired and therefore have no impact on

Contrary to his argument, Appellant is not entitled to receive his jail time credit more than once. This would lead to the absurd result of Appellant sitting in jail for a total of 1,066 days on all offenses, but receiving credit of 4,264 days (if given once for each conviction) or 2,132 days (if given once for his concurrent offenses and once for his consecutive sentence). This would clearly be a huge windfall to Appellant when he only sat in jail for a total of 1,066 days. Therefore, Appellant has not shown that Respondent's calculation of Appellant's sentence is incorrect, and the order of the ALC should be affirmed.

CONCLUSION

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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Appellant's maxout date. (See ALC Record page 5 of 16).