

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

Docket No.: 13-ALJ-04-0264-AP

Marcus Green, # 241958.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

November 13, 2013

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE?**

- II. WAS THE DEPARTMENT OF CORRECTIONS' FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before the Court pursuant to the appeal of Marcus Green (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant is currently serving a ten-year sentence for second-degree burglary, non-violent. In this appeal, appellant argues he is not being awarded the appropriate amount of earned work and good time credits toward completion of his sentence.

On November 8, 2012, appellant filed a Step-One grievance claiming his projected release date was being calculated incorrectly. The grievance was denied following a review of appellant’s projected release date. (Step One Grievance). On January 7, 2013, appellant filed a Step Two grievance. The Step Two grievance was also denied after appellant’s projected release date was again confirmed. (Step Two Grievance).

Appellant then appealed to the Administrative Law Court (ALC). On August 26, 2013, Administrative Law Judge John D. McLeod issued an Order dismissing the appeal. Judge McLeod found that although neatly typed, appellant’s brief failed to present an orderly and cohesive argument upon which the court could base a finding. Consequently, the Court ruled appellant had failed to carry his burden to show an error had been made in the calculation of his sentence. (Order of Dismissal).

Appellant has now appealed the ALC’s decision. For the reasons contained herein, Respondent respectfully requests this Court affirm the ALC’s decision in this matter.

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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

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. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

ARGUMENT AND CITATION OF AUTHORITY

I. THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE.

The ALC correctly affirmed SCDC's final agency decision because appellant's sentence has been correctly implemented.

In calculating an offender's sentence, SCDC considers four different types of credit which an inmate may accrue towards completion of his sentence: (1) calendar service credit; (2) good time credit;¹ (3) work credit;² and (4) education credit.³

¹ See S.C. Code Ann. § 24-13-210(A) ("An inmate convicted of an offense against this State, except a "no parole offense" as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections . . . whose 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, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.").

² See S.C. Code Ann. § 24-13-230(A) ("The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department, except an inmate convicted of a "no parole offense" as defined in Section 24-13-100, who is assigned to a productive duty assignment . . . or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. . . .").

Reading appellant's brief liberally, it appears appellant is attempting to challenge the calculation of good time and earned work credits. However, contrary to appellant's argument, both his good time credits and his earned work credits have been correctly calculated. Specifically, in response to appellant's challenge to the calculation of his sentence, SCDC performed a manual verification of appellant's projected release date. The manual verification confirmed appellant's sentence-related credits had been correctly calculated, including both earned work and good time credits. (Maxout Date Calculation Worksheet).⁴

Appellant also argues he should be awarded earned work credits for a period in which he was not assigned to a job. The controlling statute is S.C. Code § 24-13-230(A):

The Director of the Department of Corrections **may allow** an inmate sentenced to the custody of the department, except an inmate convicted of a "no parole offense" as defined in Section 24-13-100, **who is assigned to a productive duty assignment**, including an inmate who is serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30 or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. A maximum annual credit for both work credit and education credit is limited to one hundred eighty days.

(Emphasis added). In the case at hand, appellant does not claim he was actually performing a productive duty assignment during the period in question, and as a result, under the plain language of the statute, he would not have been entitled to accrued work credits. Moreover,

³ See S.C. Code Ann. § 23-13-230(B) (recognizing a distinction between work credits and educational credits).

⁴ At the time it was completed, the manual verification of appellant's sentence confirmed the projected release date. Since that time, appellant has been convicted of additional inmate disciplinary offenses, and as a result appellant's current projected release date is October 17, 2014.

the award of earned credits is discretionary with the Department, and the Department acted within its discretion in declining to award credits for a period in which appellant was not working. See Howard v. SCDC, 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012) (“[A]n award of work credits is given at the discretion of the Director of the Department of Corrections and is contingent upon an inmate’s completed days of employment.”).

Accordingly, because SCDC has correctly calculated appellant’s sentence, the ALC’s decision should be upheld.

II. RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 396, 489 S.E.2d 219, 220 (Ct. App. 1997). “Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to justify its action. Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm’n, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998).

The record conclusively establishes that the “substantial evidence on the whole record” supports the SCDC’s final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Public Svc. Comm’n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (S.C. 1998). As shown above, Appellant has not met this burden and his claim should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, SCDC respectfully requests that the ALC’s decision be affirmed.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



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South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, on November 13, 2013, addressed as follows:

Mr. Marcus Green, # 241958
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**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

COMES NOW, Respondent, South Carolina Department of Corrections, and proposes the following be included in the Record on Appeal:

- (1) The Step One Inmate Grievance form for Grievance Number KRCI 1652-12.
- (2) The Step Two Inmate Grievance form for Grievance Number KRCI 1652-12.
- (3) Maxout Date Calculation Worksheet date June 27, 2013
- (4) August 26, 2013 Order of Dismissal by Administrative Law Judge John D.

McLeod.

I certify that this designation contains no matter that is irrelevant to this appeal.

Dated: November 13, 2013

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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