

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

David Buff, #311020,)	Docket No. 13-ALJ-04-0417-AP
)	
Appellant,)	
)	
vs.)	
)	ORDER
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals that denial of his Step 2 grievance in which the Department states that Appellant's sentence is being properly credited for time served.

On October 6, 2006, while incarcerated and serving a sentence for 2nd Degree Burglary, Appellant committed 1st Degree Lynching. On June 1, 2007, Appellant was detained for the lynching offense and he was sentenced on January 12, 2009. The Department has credited Appellant with 591 days of time served for the period between being from the date Appellant was detained to the date he was sentenced for lynching.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate 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.

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When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented.

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." S.C. Code Ann. § 1-23-380(5) (2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See Section 1-23-380(5); See also Marietta Garage, Inc. v. South Carolina Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); South Carolina Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (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. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

DISCUSSION

Appellant alleges in his brief on appeal that he was held in solitary confinement from October 6, 2006 until being arrested and transferred on June 1, 2007 for the lynching offense. Appellant contends that his sentence for lynching should be credited for time served commencing on October 6, 2006 rather than June 1, 2007.

Pursuant to Section 24-13-40, credit for time served is calculated as follows:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated **from the date of the imposition of the sentence**. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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**, and may be given for any time spent under monitored house arrest.

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.

S.C. Code Ann. § 24-13-40 (Supp. 2013).

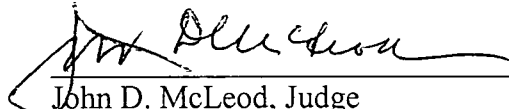
“‘Time served’ in § 24-13-40 [is] the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction).” Blakeney v. State, 339 S.C. 86, 529 S.E.2d 9 (2000).

Based upon the aforementioned law, the Court finds that Appellant has been properly credited for time served. The record shows that Appellant was serving a sentence for burglary at the time he was detained and placed in solitary confinement for lynching and killing another inmate. Appellant was serving time for his burglary sentence during the time he was in solitary confinement prior to being arrested and transferred for sentencing for the lynching offense.

IT IS THEREFORE ORDERED that the grievance appealed from is **AFFIRMED** and this matter is **HEREBY DISMISSED**.

AND IT IS SO ORDERED.

December 16, 2013
Columbia, S.C.



John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 16 day of December, 2013
By: Anthony R. Hollman
Judicial Law Clerk