RECEIVED
Oct 19 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 25-ALJ-04-0256-AP
Appellate Case No. 2026-001053

LEONARD L. FOSTER, # 179576,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES 2

STATEMENT OF THE ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

STANDARD OF REVIEW 5

ARGUMENT 6

CONCLUSION.....9

TABLE OF AUTHORITIES

CASES

Hendley v. Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996)..... 5

Major v. S.C. Dept. of Probation & Parole, 384 S.C. 457, 682 S.E.2d. 795 (2009) 7

STATUTES AND RULES

S.C. Code 1-23-610..... 5

S.C. Code 16-1-20 6

S.C. Code 24-13-100 6

S.C. Code 24-13-150..... 6

S.C. Code 24-13-210 7

S.C. Code 56-05-2945 6

STATEMENT OF ISSUE ON APPEAL

SCDC HAS PROPERLY APPLIED APPELLANT'S GOOD TIME CREDITS AND HAS CORRECTLY CALCULATED HIS SENTENCES.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Leonard Lee Foster (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). On February 28, 2025, Appellant filed a Step One Grievance in reference to his accumulated good time credits. On April 14, 2025, the Step One Grievance was investigated and denied. On April 14, 2025, Appellant filed a Step Two Grievance, which was denied on May 22, 2025. Appellant appealed to the Administrative Law Court on June 2, 2025. On April 1, 2026, Administrative Law Judge S. Phillip Lenski issued an order affirming the Department's final agency decision. 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:
>
> (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.

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

SCDC HAS PROPERLY APPLIED APPELLANT'S GOOD TIME CREDITS AND HAS CORRECTLY CALCULATED HIS SENTENCES.

On March 20, 2002, Appellant pled guilty and was sentenced to a habitual traffic offender charge (00-GS-11-1350/Y437728), reckless homicide – count two (02-GS-11-142/Direct Indictment), and felony DUI involving death – count one (02-GS-11-142/Direct Indictment). (See Sentence Sheets). Appellant was sentenced to five years for the habitual traffic offender charge, to be served consecutively with the other two sentences. Appellant was sentenced to ten years for reckless homicide, to be served consecutively with the other two offenses. Appellant was sentenced to twenty-five years for Felony DUI involving death to be served consecutively with the other two sentences. Appellant was given 493 days of jail time credit towards his total sentence. Appellant was admitted to SCDC on March 22, 2002.[1]

S.C. Code § 16-1-20(A)(2) defines a Class B felony as a felony which is punishable by "not more than twenty-five years." Felony DUI involving death is punishable by imprisonment for "not less than one year nor more than twenty-five years," making it a Class B Felony. S.C. Code § 24-13-100 defines a no parole offense as, in relevant part, "a class A, B, or C felony . . . which is punishable by a maximum term of imprisonment for twenty years or more. Thus, felony DUI involving death under S.C. Code § 56-05-2945(A)(2) is a no-parole offense and Appellant must be incarcerated for at least 85% of his sentence per S.C. Code § 24-13-150(A), which reads in part:

> Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections [. . .] is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served

[1] Appellant also had a 60-day driving under suspension sentence to serve, but that sentence is not at issue here as it was not part of the consecutive structure and was complete on April 26, 2002. (See Sentence Sheet).

at least eighty-five percent of the actual term of imprisonment imposed (emphasis added).

With the 493 days of jail time ordered by the court credited towards Appellant's total sentence of 40 years, the sentence start date for Appellant's sentence is November 12, 2000, which is the date of the offense. (See ALC R. p. 5 and 15). In entering Appellant's consecutive sentences into the automated system, SCDC has Appellant serving the Felony DUI sentence first to allow him to become parole eligible upon completion of the Felony DUI sentence.[2] (See ALC R. p. 5). Appellant is required to serve at least eighty-five percent of the actual term of imprisonment imposed; therefore, Appellant must serve at least 21 years, 2 months, and 30 days of the 25-year sentence for the Felony DUI offense. With a sentence start date of November 12, 2000, Appellant's completion date for Felony DUI was February 5, 2022, which was 21 years, 2 months, and 30 days from the sentence start date.[3] (See ALC R. p. 5).

Appellant argued below that the good time credits he earned towards the Felony DUI sentence should be applied to his other sentences, which he asserted would satisfy his remaining time and complete all his sentences. This is incorrect because good time credits are specific to each offense, and each type of offense, in a consecutive sentence structure. S.C. Code 24-13-210(B) provides that an inmate serving a no-parole sentence can earn three days of good time credit per month. Therefore, Appellant could earn three days per month of service for his Felony DUI offense. Pursuant to the statute, Appellant earned good time credits at the rate of three days for each month he served on the Felony DUI sentence beginning from his sentence start date of November 12, 2000.

---

[2] For consecutive sentence structures, SCDC enters no parole sentences as the first sentence to be served in a consecutive structure so that they will be served before the parole eligible sentences. This allows an inmate to be eligible for parole upon completion of the no parole sentence and is compliant with Major v. South Carolina Dept. of Probation, Parole and Pardon Services, 384 S.C. 457, 682 S.E.2d. 795 (2009).

[3] There are six leap years from 2000 to 2022.

Contrary to Appellant's assertion, good time credits he earned cannot be used to reduce his Felony DUI sentence below 85% because the statute requires that Appellant serve "at least" 85%. S.C. Code 24-13-150. S.C. Code 24-13-210(B) also specifically states that "[n]o inmate convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150." Accordingly, the Felony DUI completion date cannot be backed up any further than February 5, 2022, as this is when the Appellant completes 85% of the 25-year sentence. Because the reckless homicide sentence was ordered to be a consecutive sentence, and therefore could not begin until the Felony DUI sentence was complete, Appellant could not begin serving the reckless homicide sentence until February 5, 2022. This sentence, and the habitual traffic offender sentence, which will begin upon the completion of the reckless homicide sentence, are both eligible to earn 20 days of good time for each month served pursuant to S.C. Code § 24-13-210(A). Both of these sentences will receive deductions of the good time earned at the 20 days for each month served towards those sentences, unless Appellant fails to earn or loses good time pursuant to the SCDC disciplinary system.

Following the completion of the Felony DUI sentence on February 5, 2022, Appellant began serving the 10-year sentence for reckless homicide. (See ALC R. p. 5). This sentence is a parole-eligible offense; therefore, the Appellant is required to serve the full sentence minus his good time credits and earned work credits. With the current projected work credits and good time credits applied to this 10-year sentence, as of today's date, Appellant's maxout date on the 10-year sentence will be January 28, 2027. (See ALC R. p. 5). Upon completion of the reckless homicide sentence, Appellant will begin serving the 5-year habitual traffic offender sentence. This sentence is also a parole-eligible sentence; therefore, the Appellant will be required to serve the full sentence minus his

good time credits and earned work credits. As of today's date, this sentence is set to begin on January 28, 2027 and will be complete on July 18, 2029. (See ALC R. p. 5).

Appellant's good time credits have been properly applied to each of his sentences pursuant to S.C. Code Ann. § 24-13-210, and Appellant has failed to demonstrate that SCDC has calculated his sentences incorrectly. Therefore, this Court should uphold the ALC's order.

CONCLUSION

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

October 19, 2026