

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

Case No. 13-ALJ-04-0417-AP

David Buff, # 311020.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

May 7, 2014

South Carolina Department of Corrections

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SC Court of Appeals

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STATEMENT OF THE ISSUE ON APPEAL

- I. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of David Buff (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant is currently committed to SCDC with a ten year sentence for Lynching 1st Degree. (R.p. ____). For that conviction, Appellant was arrested on June 1, 2007. (R.p. ____). He was sentenced on January 12, 2009. (R.p. ____).

Appellant filed a Step One Grievance on February 18, 2011, challenging SCDC’s interpretation of his time served credit. This grievance was investigated and denied. (R.p. ____). Appellant filed a Step Two Grievance on August 29, 2012, which was also investigated and denied. (R.p. ____). Appellant then filed a notice of appeal with the Administrative Law Court on May 29, 2013. (R.p. ____).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding SCDC properly applied Appellant’s credit for time served. The ALC rejected Appellant’s argument that the date of his time served credits should have begun on the date he was placed in solitary confinement while imprisoned. (R.p. ____).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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 of 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(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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.

ARGUMENT AND CITATION OF AUTHORITY

I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). 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, 461 S.E.2d 388 (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 Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented during Appellant's appeal supports SCDC's decision. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. (R.p. ____). Appellant's sentencing sheet shows that Appellant was sentenced January 12, 2009 for his Lynching-

1st Degree conviction. (R.p.____) Appellant’s Jail Time Report for SCDC Transfer provides June 1, 2007 as the arrest date. (R.p.____) By statute, Appellant must receive credit for time served based upon the sentencing date. While full credit is normally given for time served prior to trial and sentencing, the statute does not permit credit for time served prior to trial and sentencing when a prisoner is serving a sentence for a prior offense. See S.C. Code Ann. § 24-13-40 (Supp. 2013). Appellant was incarcerated for a prior burglary sentence when he was placed in solitary confinement for lynching and killing another inmate. (R.p.____) He was not detained for Lynching-1st Degree until June 1, 2007. (R.p.____) Accordingly, SCDC was correct in using June 1, 2007 as a start date to calculate Appellant’s time served credits.

In his initial brief to this Court, Appellant seems to be arguing an issue that was not before the lower court. To appeal a decision to the Administrative Law Court, Appellant must exhaust his administrative remedies. The Supreme Court created an avenue by which inmates could seek review of final decisions of the Department in “non-collateral” matters, i.e., matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the ALC and ultimately to circuit court pursuant to the Administrative Procedures Act. Al-Shabazz v. State, 338 S.C 354, 527 S.E.2d 742 (S.C. 2000). Appellant’s initial brief to this court challenges the calculation of his good time credits. However, Appellant’s Step One grievance indicates that he is challenging the calculation of his time served credits. (R.p.____) Accordingly, the lower court’s Order only addressed whether Appellant’s current sentence has been accurately credited for time served. Therefore, the issue of whether Appellant’s good

time credits have been calculated correctly is not properly before this Court.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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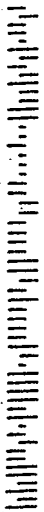
South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief
by depositing a copy of same in the United States Mail, postage prepaid, May 7, 2014
addressed to the Appellant as follows:

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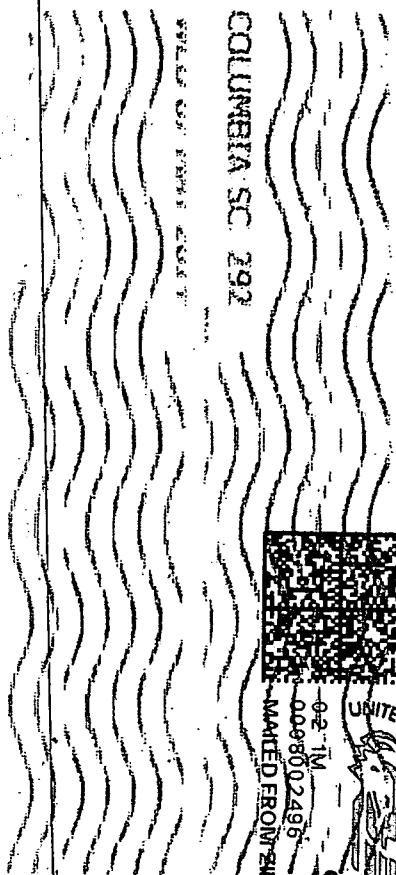
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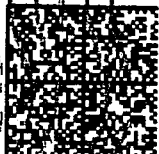
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