

In The State of South Carolina

In The Court of Appeals

Appeal From The Administrative Law Court

Deborah Brooks Durden - Administrative Law Judge

Case No-13-ALJ-04-0772-AD

Appellate Case No-2014-001060

Charles R. Carter 246054-

Appellant

VS

South Carolina Department of Corrections

Respondent

Notice of Appeal

Charles R. Carter, Appeals The decision of The Honorable Deborah Brooks Durden, Dated May 01-2014. Appellant Received a copy of This decision on May 7th-2014.

Date - 6-2-2014

Charles R. Carter 246054

Charles R. Carter

P.O. Box 2039

Ridgeland SC 29936

Prose

Other Counsel of Record

Christo Mer D. Florian

P.O. Box 21787

Columbia SC 29221

Attorney For Respondent

SC Court of Appeals

JUN 06 2014

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In The State of South Carolina

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Count
of Appeals

In The Court of Appeals

JUN 06 2014

Appeal From The Administrative Law Court

SC Court of Appeals

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Charles R. Carter 246054

Appellant

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Respondent

PROOF OF SERVICE

I certify that I have served the notice of Appeal on South Carolina Department of Corrections, by depositing a copy of it in the United States mailing postage prepaid addressed to South Carolina Department of Corrections, Christopher A. Florian at P.O. Box 21787 Columbia SC 29221 and to the South Carolina Administrative Law Court at 1205 Pendleton Street Columbia SC 29201 and to the South Carolina Court of Appeals at P.O. Box 11629 Columbia SC 29211 on this day of June 2nd - 2014

Christopher A. Florian
PO Box 21787
Columbia SC 29221
Attorney for Respondent

Charles R. Carter 246054
Charles R. Carter 246054
P.O. Box 2039
Ridgeland SC 29936

SIGNED TO AND SUBSCRIBED BEFORE

THIS 2 DAY OF June 2014

Virginia Robinson

Date - 6-2-2014

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2021

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SC Court of Appeals

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Charles R Carter 246054

Appellant

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Dear The Honorable Jenny A Kitchens

Please find enclosed The Following:

1. Notice of Appeal
 2. Proof of Service That All Parties Have Been Served.
 3. Motion To Proceed in Forma Pauperis
 4. Financial Statement in Support of Motion To Proceed in Forma Pauperis and a Copy of order ~~To Be~~ Challenged
- If This meet your Requirements Please Send To me a check in stamped copy when filed. Also Please Disregard My Motion For Time enlargement if it is not needed.

I Look Forward To Hearing From you. Under The Current Security Situation, This is The Best That I can Provide at This Time. Thank you Very Much For your much needed assistance and Cooperation and Patience.

6-2-2014

Respect Fully Submitted
Charles R Carter 246054
PO Box 2039
Ridgeland SC 29936

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JUN 06 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC Court of Appeals

Docket No. 13-ALJ-04-0772-AP
Grievance No. RCI 0856-12

Charles Ray Carter, #246054,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Charles Ray Carter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant filed a Step 1 grievance on October 4, 2012 alleging that his max out date was incorrectly calculated due to a clerical error on the original sentencing sheet. This grievance was investigated and denied. Appellant then filed a Step 2 grievance on January 7, 2013 alleging that he was “denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of [his] sentence without [him] knowing or without a hearing more than 10 months after [he] was sentenced....” This grievance was investigated by Division Director Jannita C. Gaston and denied on August 23, 2013. The Appellant received the Department’s final decision on or about September 16, 2013. On October 7, 2013, the Appellant filed this appeal with the Court.

In his Notice of Appeal, Appellant claims that SCDC has not properly calculated his sentence and that SCDC is holding him past his release date. Appellant requests that SCDC release him immediately “because his original release date has passed.”

STANDARD OF REVIEW

The Court’s jurisdiction to hear this matter is derived 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 Administrative Law Court’s 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

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his/her 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. When reviewing the Department's decisions in inmate grievance matters, the ALC 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(A)(6) (1986 & Supp. 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 S.C. Code Ann. § 1-23-380(A)(6); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998). Here, Appellant appeals SCDC's final agency action regarding a request to recalculate Appellant's sentence; therefore, this Court has jurisdiction to hear the appeal.

DISCUSSION

On December 10, 1997, the Honorable John C. Hayes III sentenced Appellant to thirty years for violating S.C. Code Ann. § 44-53-0375(B), offense code 0114 ("Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine – 3rd or sub. offense"). On the sentencing sheet, however, the York County Clerk of Court's office wrote in the incorrect CDR code of 0102¹, although next to the incorrect code is a description of the actual offense for which Appellant was convicted "Poss: crack cocaine WID").

Upon his entry into SCDC custody, Appellant's sentence was entered under the incorrect CDR code of 0102 instead of 0114. Sometime in the early 1998, Appellant took the initiative to contact the York County Clerk of Court to inquire about a then-existing detainer. In his letter, Appellant acknowledged that his conviction was for "poss of crack with intent to distribute." However, Appellant also stated that he was not sentenced "for manufacturing [sic] a control [sic] substance." Appellant is correct that he was not sentenced for *manufacturing* a drug. However, the

¹ The old CDR 0102 code was for S.C. Code Ann. 44-53-0375(A) ("Drugs/Possession of less than one gram of ice, crank, or crack cocaine – 3rd or sub. offense").

language in S.C. Code Ann. § 44-53-0375(B) includes any “person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or *possesses with intent to distribute, dispense, or deliver... cocaine base....*”

On October 13, 1998, SCDC’s Offender Records Office received a letter in reply to Appellant’s letter. The letter was from York County Deputy Clerk of Court, Peggy C. Carroll, who wrote:

I have been requested by an inmate, Charles Ray Carter, to provide you with copies of his sentence sheet for a conviction on 12/20/97 indicating his conviction was for Poss. Crack Cocaine with Intent to Dist. 3rd Offense and not Mfg. Control Substance as he indicated in his letter.

As a result of the clarification of the clerical error made on the sentencing sheet, SCDC updated its records to reflect the proper sentence. The true bill returned against Appellant by the York County grand jury on May 22, 1997 was for “Possession of Crack Cocaine with Intent to Distribute,” which falls under CDR code 0114 based on § 44-53-0375(B)—Not CDR code 0102, which is for possession of less than one gram of ice, crank, or crack cocaine and is based on § 44-53-0375(A). Therefore, the actual crime with which Appellant was charged, and of which he was ultimately convicted, was a third offense of possession of crack cocaine with intent to distribute.

Appellant cites Tant v. S.C. Dept. of Corrections, 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011) addressing ambiguity in sentencing sheets. In Tant the Court of Appeals held that

Under ordinary circumstances, SCDC must determine the sentence imposed by the trial court from the sentencing sheets. If there is some ambiguity in the sentencing sheets, SCDC may examine the transcript of record to determine the intent of the sentencing judge.... In this case, there is no ambiguity. Therefore, SCDC was limited to interpreting the sentencing sheets.

Tant 395 S.C. at 449. (internal citations omitted). The only exception noted by the Tant court to this general rule is where the trial judge announced one sentence in the presence of the defendant and later increased that sentence in the written order. See Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010). Because there is no ambiguity whatsoever as to the sentence imposed on the sentencing sheet in this case, the application of Tant requires that the thirty-year sentence unambiguously imposed on the sentencing sheet controls. Moreover, the nature of the crime for possession with intent to distribute, the grand jury’s true bill, and all other documentation in this case

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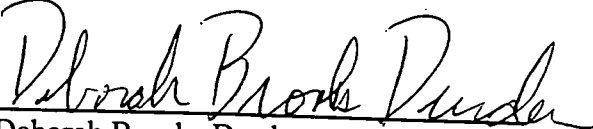
supports SCDC's 1998 correction of Appellant's CDR code for purposes of recalculating his sentence in accordance with the sentencing court's order.

The record conclusively establishes that the "substantial evidence on the whole record" supports SCDC's final agency decision. Appellant has the burden of proving that SCDC's decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Pub. Svc. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the Department is **AFFIRMED** and the appeal of the Appellant is **DENIED**.

AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

May 1, 2014
Columbia, South Carolina

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 1st day of May 2014
By: R.E. [Signature]
Judicial Law Clerk