THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn C. Matthews

Docket No.: 13-ALJ-04-0534-AP

Michael Heath Bolin, # 341806.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

May 8, 2014

South Carolina Department of Corrections

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. STATUTES

II. CASES

STATEMENT OF THE ISSUE ON APPEAL

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

STATEMENT OF CASE

On May 15, 2012, appellant plead guilty to possession with intent to distribute methamphetamine, second offense; conspiracy to manufacture methamphetamine, second offense; possession of methamphetamine, second offense; and unlawful possession of a pistol. He was sentenced to concurrent terms of five years' incarceration on each of the methamphetamine charges, and he received a concurrent one-year sentence for unlawful possession of a pistol. (R.pp.6, 8).

Appellant filed a Step One Inmate Grievance on October 17, 2012, claiming his sentences should be considered non-violent and not subject to the requirement that appellant serve 85% of his sentence before he becomes eligible for release. This grievance was upheld to the extent it challenged appellant's classification as violent, but denied as to the 85% service requirement. (R.p.9). Appellant filed a Step Two Grievance on July 9, 2013. The Step Two Grievance was investigated and denied. (R.p.12). Appellant received the Department of Corrections' (SCDC) final agency determination on July 17, 2013, and he filed his Notice of Appeal in the Administrative Law Court (ALC) on July 19, 2013. (R.p.13).

Administrative Law Judge Carolyn C. Matthews affirmed SCDC's decision by way of a February 24, 2014 Order. Judge Matthews acknowledged appellant's argument based upon language found in the Omnibus Crime Reduction and Sentencing Reform Act of 2010, but found that nothing in the language of the amended penalty for appellant's offenses reflected a legislative intent to remove the 85% requirement. Therefore, the ALC found SCDC had correctly calculated appellant's sentences. (R.pp.1-4).

Appellant has now appeals the ALC's decision. For the reasons that follow, SCDC respectfully requests this Court affirm the ALC's decision upholding the calculation of appellant's sentences.

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:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (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 is 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

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

The ALC correctly affirmed SCDC's final agency decision that appellant is subject to the requirement that he serve 85% of his incarcerative sentence before he is released.[1]

Pursuant to S.C. Code Ann. § 24-13-150(A), "[n]otwithstanding any other provision of law . . . an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed." In addition, "[n]o prisoner who is serving a sentence for a 'no parole offense' is not eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150." S.C. Code Ann. § 24-21-560(A).

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[1] Both parties agree that appellant's convictions for possession of methamphetamine, second offense, in violation of S.C. Code Ann. § 44-53-375(A) and unlawful possession of a pistol are not subject to the requirement that an offender serve 85% of his sentence. Therefore, the only sentences at issue are those for possession with intent to distribute methamphetamine, second offense, and conspiracy to manufacture methamphetamine,

For purposes of definition under South Carolina law, a "no parole offense" means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. § 24-13-100. Both possession with intent to distribute methamphetamine, second offense; and conspiracy to manufacture methamphetamine, second offense are punishable by up to thirty years' incarceration. S.C. Code Ann. § 44-53-375(B)(2). Therefore, they are classified as Class A felonies. See S.C. Code Ann. §§ 16-1-20(A)(1); 16-1-30.

In arguing appellant's offenses are not subject to the requirement an offender serve 85% of his sentence before eligible to maxout, appellant relies upon language added to S.C. Code Ann. § 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

See S.C. Act No. 273 (June 2, 2010). This language did not appear in S.C. Code Ann. § 44-53-375(B) prior to the Act.

However, nothing in the amended language of section 44-53-375(B) reflects a legislative intent to remove the 85% requirement. See State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("Whenever possible, legislative intent should be found in the plain language of the statute itself."). The plain language of the statute states only

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second offense, both in violation S.C. Code Ann. § 44-53-375(B)(2).

that an offender is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. None of these items is incompatible with the requirement that an offender serve 85% of their incarcerative sentence. See S.C. Code Ann. § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); § 24-13-230(B) (providing for work and education credits for offenders who are subject to the 85% requirement); § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

Contrary to appellant's argument, there is no need to reconcile a conflict between the amended language of S.C. Code Ann. § 44-53-375(B) and the 85% requirement of S.C. Code Ann. § 24-13-150(A) because it is possible to give effect to the plain language of both statutes. See Beaufort County v. SC State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."); Richardson v. City of Columbia, 340 S.C. 515, 520, 532 S.E.2d 10, 12 (Ct. App. 2000) ("When two statutes can be reconciled, the court must construe the statutes in such a way that both remain functional. The more recent statute takes precedence over the earlier statute only if there is a conflict between the two statutes.") (internal citations omitted). As described above, offenders can be afforded each item listed in amended S.C. Code § 44-53-375(B) without altering the requirement of service of 85% of the sentence. Under the amended language, offenders are eligible for parole, but if they are not paroled, they are still required to serve 85% of their sentences. See

S.C. Code Ann. § 24-13-150(A) ("**Notwithstanding any other provision of law** . . . an inmate convicted of a 'no parole offense' **as defined in Section 24-13-100** . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.") (emphasis added).

Appellant's interpretation of the amended language is also problematic because it would render the provision referencing "community supervision" completely meaningless. See Barton v. SCDPPPS, 404 S.C. 395, 415,745 S.E.2d 110, 121 (2013) ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless."). Only offenders serving sentences for "no parole offenses" are required to participate in community supervision. In addition, the provisions governing the community supervision program requires service of 85% of the sentence before participation. See S.C. Code Ann. § 24-21-560(A).

In upholding SCDC's final agency decision, the ALC correctly found the plain language of the Omnibus Crime Reduction and Sentencing Reform Act did not alter the requirement of service of 85% of an inmate's sentence. (R.pp.1-4). Therefore, the ALC decision should be affirmed.

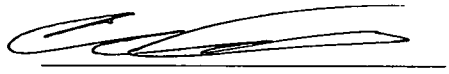
CONCLUSION

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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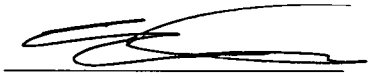
CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on May 8, 2014, addressed as follows:

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