STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Anthony Jones, #258461	)	Docket No. 14-ALJ-04-095-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	**ORDER AFFIRMING DECISION**
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	
	)	

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed October 23, 2014 by Anthony Jones ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant filed a Step One Grievance on May 29, 2014, claiming that he is not receiving good time credits and work credits correctly and that his sentence is being miscalculated. This grievance was denied as Appellant is serving his sentence for Manufacture/Distribution of Crack Cocaine, second offense, which has a mandatory 85% service requirement. Appellant then filed a Step Two Grievance on June 24, 2014. This grievance was investigated and denied. Appellant filed his Notice of Appeal on October 23, 2014, claiming that his offense, Manufacture/Distribution of Crack Cocaine, second offense, was removed from the no parole category and therefore he does not need to serve a mandatory 85% of his sentence.

STANDARD OF REVIEW

The ALC'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 ALC'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/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 SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these 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). The ALC will not disturb the findings of an administrative agency if its 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 the conclusion reached by the administrative agency. Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)). 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, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)).

LAW/ANALYSIS

Appellant was sentenced on February 11, 2013 to a mandatory five (5) year sentence for Manufacture/Distribution of Crack Cocaine, second offense, pursuant to S.C. Code Ann. § 44-53-375(B)(2) (Supp. 2013).

The requirement that an inmate convicted of a "no parole" offense serve 85% of the sentence is found in S.C. Code Ann. § 24-13-150(A) (Supp. 2013), which reads:

> 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, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, 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. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

Under S.C. Code Ann. § 24-13-100 (2007), a "no parole" offense is defined as "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." Manufacture/Distribution of Crack Cocaine, second offense is punishable by up to thirty years incarceration. See S.C. Code Ann. § 44-53-375(B)(2); see also S.C. Code Ann. 16-1-90 (Supp. 2013) (noting that Section 44-53-375(B)(2) is a Class A felony).

The Appellant contends that his conviction is not subject to the requirement that an inmate serve 85% of the sentence. 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, which reads:

> 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). Appellant contends that with the enactment of the Omnibus Crime Reduction, the General Assembly decided to drastically lessen the punishment for drug offenses, and to provide for probation and parole for offenders who were previously ineligible for probation and parole. 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 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 are incompatible with the requirement that an inmate serve 85% of their sentence. See S.C. Code Ann. § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-13-230(B) (providing for work and education credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

The words of a statute must be construed in a manner which harmonizes its subject matter and accords with its general purposes. Cabiness v. Town of James Island, 393 S.C. 176,

192, 712 S.E.2d 416, 425 (2011) (citing Eagle Container Co. v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008)). Appellant claims that the amended provisions of S.C. Code Ann. § 44-53-375 take Appellant out from under the "no parole" provision of S.C. Code Ann. § 24-13-150. However, the plain language of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 did not alter the requirement of service of 85% of an inmate's sentence. Therefore, the Appellant's sentence has been correctly calculated.

Based upon the foregoing,

IT IS HEREBY ORDERED that the final decision of the SCDC is **AFFIRMED.**

AND IT IS SO ORDERED.

Columbia, S.C.
January 27, 2015

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 27 day of January 2015

by: Anthony R. Golden
Judicial Law Clerk