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FILED

JUN 12 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

James A. Sellers, 243348,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 15-ALJ-04-0078-AP
Grievance No.: KRCI 70-14

RECEIVED
ORDER

JUL 15 2015

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed February 12, 2015, by James A. Sellers (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the Department’s decision denying him eligibility to earn sentence reduction credits on his twenty-five year sentence for Accessory Before the Fact to a Felony (Murder). In this appeal, Appellant argues he was improperly sentenced under the appropriate statute and, therefore, any statutory restrictions on eligibility for sentence reduction credits do not apply to him. Additionally, Appellant filed a Motion to Compel the Department to Include Additional Information in the Record. Appellant specifically moves this Court to compel the Department to submit information concerning alleged ex parte communications with The Honorable Sidney T. Floyd, now deceased.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep’t of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when, as in this case, an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan, 355 S.C. at 441, 586 S.E.2d at 126.

First, I address Appellant’s motion. In his motion, Appellant argues, as part of his investigation of this grievance, he received a response to an Automated Request to Staff Member indicating the Department had been in direct contact with Judge Floyd concerning the calculation

of Appellant's trafficking sentence. The communication resulted in the modification of the service requirement for that sentence. Appellant contends he requested a copy of the communication; however, the Department refused to supply him with one. Accordingly, Appellant moves this Court to compel the Department to produce a copy of the communication and include it in the Record.

In its Response to Appellant's motion, the Department supplied the communication. The communication consists of a request from the Solicitor's Office for clarification on Appellant's trafficking sentence and the Horry County Clerk of Court's response, signed by Judge Floyd, clarifying Appellant's trafficking sentence was classified as CDR Code 50450: Trafficking in Crank. Because the communication, which is not an improper ex parte communication, has been filed with the Court and served on Appellant, Appellant's motion is now moot. Moreover, Appellant's current grievance concerns his conviction for Accessory Before the Fact to a Felony (Murder), not his trafficking conviction. Accordingly, this communication is irrelevant to this matter.

Next, on the merits, Appellant complains that the Department has not properly calculated Appellant's twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder). Appellant claims that under the applicable statutes, a conviction for Accessory Before the Fact to a Felony (Murder) is sentenced as if he was convicted of the principle crime, murder. In other words, Appellant must be sentenced under the murder statute. Appellant claims the murder statute, as it was written when he was convicted, provided three (3) sentencing options: death, imprisonment for life, or a "mandatory minimum term of imprisonment for thirty years." S.C. Code Ann. § 16-3-20 (Supp. 1997). He further claims that he was not sentenced properly under this statute because Judge Floyd sentenced him to twenty-five (25) years' imprisonment instead of the statutorily required thirty (30) years' imprisonment. See id. Appellant further argues that because his sentence is not in compliance with the thirty (30) year requirement pursuant to section 16-3-20, his sentence is not governed by the phrase "mandatory minimum," which modifies the thirty (30) years required under the statute. As a result, Appellant asserts his twenty-five (25) year sentence is not a mandatory minimum and the Department should apply sentence reduction credits to reduce his time.

In contrast, the Department contends that although Judge Floyd did not sentence Appellant to the statutorily required mandatory minimum of thirty (30) years under section 16-3-20,

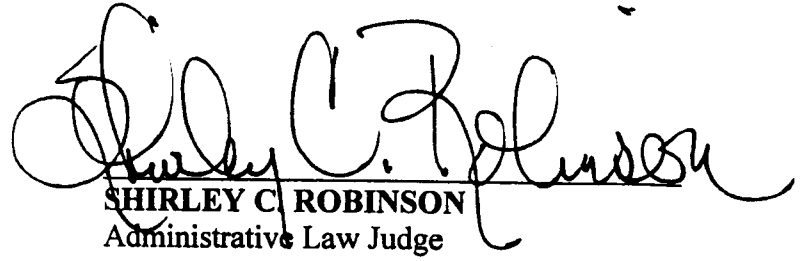
Appellant was sentenced pursuant to that section and the phrase “mandatory minimum” is applicable to Appellant’s sentence. The Department suggests the discrepancy between the thirty (30) year requirement and Appellant’s actual sentence arose because the clause requiring a mandatory minimum term of imprisonment for thirty (30) years was a recent amendment at the time of Appellant’s sentencing. The Department further comments that Appellant received a boon of five (5) years’ less imprisonment as a result of Judge Floyd’s actions, and the Supreme Court of South Carolina affirmed Appellant’s convictions *and sentences* on direct appeal in State v. Sellers, Op. NO. 99-MO-79 (S.C. Sup. Ct. filed Nov. 15, 1999).

In Kerr v. State, the South Carolina Supreme Court held the phrase “‘mandatory term’ of imprisonment is not equivalent to a ‘mandatory minimum term’ of imprisonment.” 345 S.C. 183, 188, 547 S.E.2d 494, 497 (2001). In Nelson v. Ozmint, the supreme court further found that the Department was not required to apply good time credits to a “mandatory minimum” sentence of one year for a conviction of CDV third. Specifically, the supreme court held “we find the absence of a provision restricting [the Department] from applying good time and earned work credits to reduce an inmate's sentence below the mandatory minimum does not indicate [the Department] must apply these credits in such a way.” Nelson v. Ozmint, 390 S.C. 432, 437, 702 S.E.2d 369, 371 (2010).

Here, Judge Floyd sentenced Appellant to less than the statutory “mandatory minimum” sentence of thirty (30) years pursuant to section 16-3-20 and his sentence was affirmed on appeal by the supreme court. Therefore, I find the “mandatory minimum” language of 16-3-20 applies. I further find, as in Nelson v. Ozmint, “the absence of a provision restricting [the Department] from applying good time and earned work credits to reduce an inmate's sentence below the mandatory minimum does not indicate SCDC must apply these credits in such a way. Id. Accordingly, I affirm the Department’s determination that Appellant’s twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder) is not eligible for sentence reduction credits.

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

June 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has to date served this order in the above entitled action upon all parties to the cause by depositing a copy hereof, in the United States mail postage paid, or in the emergency Mail Service addressed to the party last or the next to last,
On 12 day of June 2015
By [Signature]
Judicial Law Clerk