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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Kevin Reed, 297255, Appellant, vs. South Carolina Department of Probation, Parole & Pardon Services, Respondent.	Docket No.: 15-ALJ-15-0032-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to an appeal by Kevin Reed ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). In 2003, Appellant was sentenced to concurrent sentences of seventeen (17) years' imprisonment each for armed robbery and attempted armed robbery. In 2005, Appellant was sentenced to ten years' imprisonment for assault and battery of a high and aggravated nature to be served consecutive to his prior sentences. Appellant has accrued earned work and goodtime credits while serving his sentences and inquired about the application of these credits to his sentences, particularly its effect on service in the Community Supervision Program after he was released from the SCDC. In a letter dated May 7, 2015, the South Carolina Department of Probation, Parole and Pardon Services ("the Department" or "Respondent") informed Appellant that because he was serving time for two non-parole offenses, he was required to serve eighty-five percent of his sentences before he would have the opportunity to enter the Community Supervision Program. On May 15, 2015, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Department's determination that he had to serve eighty-five percent of his sentences without the application of his earned work and goodtime credits.

ISSUES

1. Whether the Department had the authority and jurisdiction to deprive Appellant of his earned work and goodtime credits within the South Carolina Department of Corrections while enforcing the Community Supervision Program.

2. Whether Appellant has a state-created liberty interest in work and goodtime credits.

3. Whether the Department erred in failing to apply Appellant's earned work and goodtime credits to his actual term of imprisonment and the Community Supervision Program.

DISCUSSION

In Al-Shabazz v. State, the South Carolina Supreme Court held inmates have a right to administrative review in two circumstances: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). This Court has jurisdiction to hear this appeal because it concerns the Department's calculation of Appellant's sentence and sentence-related credits. See id.

Section 1-23-380(5) of the South Carolina Code (Supp. 2014) provides the standard of review used by appellate bodies to review administrative decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). That section states:

> The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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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.

§ 1-23-380(5). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010).

1. Whether the Department had the authority and jurisdiction to deprive Appellant of his earned work and goodtime credits within the South Carolina Department of Corrections while enforcing the Community Supervision Program.

Appellant argues only SCDC can award and revoke earned work and goodtime credits; therefore, only SCDC, and not the Department, has jurisdiction to determine whether Appellant's

earned work or goodtime credits are applied to his sentence. Appellant claims the Department's plan to place him in the CSP after he is released from SCDC effectively revokes and nullifies his earned work and goodtime credits when the Department has no authority to do so.

The Department contends it has not deprived Appellant of his earned work or goodtime credits, and Appellant must serve eighty-five percent of his sentences under the law without applying his credits. I agree with the Department.

Appellant is serving two concurrent seventeen year sentences for armed robbery and attempted armed robbery, which are both class A felonies. See S.C. Code Ann. § 16-1-90 (Supp 2014). Class A felonies are "no parole" offenses under section 24-13-100 of the South Carolina Code (2007 & Supp. 2014). Because Appellant is serving sentences for no-parole offenses, he is subject to section 24-13-150(A) of the South Carolina Code (Supp. 2014), which provides:

> [A]n 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.*

(emphasis added). Accordingly, because Appellant is serving sentences for two "no parole" offenses, he must serve eighty-five percent of his sentences without the application of earned work or goodtime credits. Furthermore, this requirement is unaffected by Appellant's participation in the CSP when he leaves SCDC:

> [A]ny sentence for a "no parole offense" as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a "no parole offense" is 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) (2007).

Moreover, the statutes governing an inmate's ability to acquire earned work and goodtime credits also note the credits cannot be applied to reduce the eighty-five percent requirement of section 24-13-150. See S.C. Code Ann. § 24-13-210(B) (Supp. 2014) (providing SCDC may allow

an inmate to earn credits for work and vocational programs, but no inmate convicted of a "no parole offense" is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150"); S.C. Code Ann. § 24-13-230(B) (Supp. 2014) (providing an inmate who displays good conduct is entitled to a deduction from his sentence but "[n]o inmate convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150").

The Department has not revoked or nullified Appellant's earned work and goodtime credits by properly applying statutory law. If Appellant were serving more than eighty-five percent of his sentence, he might be able to apply the credits and receive a benefit. However, it appears Appellant has already received the benefit of servicing the minimum amount possible of his sentence for his crimes.

Based on the foregoing, I find substantial evidence supports the Department's determination that Appellant must serve eighty-five percent of his sentences without the application of goodtime credits. See Friends of the Earth, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

2. Whether Appellant has a state-created liberty interest in work and goodtime credits.

Appellant claims he has approximately 910 days of earned work and goodtime credits from actively participating in various vocational programs, assigned work detail, and good conduct. He contends he is entitled to the benefit of these credits under Wolff v. McDonnell, 418 U.S. 539 (1974), and the Department has taken them away in violation of his due process rights. Appellant argues his right to his credits should not be "arbitrarily abrogated by the provisions of S.C. Code of Law § 24-13-150 and § 24-21-560."

Appellant incorrectly asserts the Department has taken away his earned work and goodtime credits. As explained above, the Department has appropriately calculated and enforced Appellant sentence pursuant to section 24-13-150(A) and section 24-21-560, which has had no effect on Appellant's earned work and goodtime credits. Appellant presents no evidence that the Department has revoked some or all of his claimed 910 days of credit. Accordingly, because the Department has done nothing to his earned work or goodtime credits, whether Appellant has a state-created liberty-interest in his earned work and goodtime credits is irrelevant to this appeal.

3. Whether the Department erred in failing to apply Appellant's earned work and goodtime credits to his actual term of imprisonment and the Community Supervision Program.

Appellant contends that because he is allowed to earn work and goodtime credits, he should be able to apply them. He acknowledges that sections 24-13-150 and 24-21-560 require him to serve eighty-five percent of his sentence without the application of good time credits; however, he contrasts this with sections 24-13-230(B) and 24-13-210(B), which provide that inmates serving sentences of thirty years to life are not eligible to earn work or goodtime credits. He essentially claims that if he can earn credits, he should be able to use them to reduce his sentence regardless of the eighty-five percent requirement. He further reasserts that if he can apply his credits, he has successfully completed eighty-five percent of his sentence and can move into the CSP now.

Unfortunately, under the current statutory scheme, it appears Appellant will not be able to use his credits to reduce his sentence. Sections 24-13-150, 24-21-560, 24-13-210(B), and 24-13-230(B) each expressly provide that earned work and goodtime credits cannot be applied to allow an inmate to serve less than eighty-five percent of his sentence. Further, section 24-13-230(C) of the South Carolina Code (Supp. 2014) provides "[n]o credits earned pursuant to this section may be applied in a manner which would prevent full participation in the Department of Probation, Parole and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560." However, as noted above, Appellant appears to be receiving the benefit of serving the minimum time possible for his sentences.

I find no error in the Department's determination that Appellant must serve eighty-five percent of his sentence without regard to his earned work and goodtime credits.

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

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

September 10, 2015
Columbia, South Carolina