

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-AP-040179-AP
Grievance No. LCI 0620-14

RECEIVED

NOV 16 2015

SC Court of Appeals
ORDER

FILED

NOV 05 2015

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant began to serve a 13-year sentence at the Department on March 19, 2008. During his incarceration on this sentence, Appellant has had at least 20 disciplinary infractions. In this matter he is appealing the sentence related to disciplinary offense number 18. On February 11, 2013, Inmate was convicted of offense 903, Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Or Inhalants. SCDC Policy OP-22.14, Inmate Disciplinary System. He was sanctioned with the loss of 230 days of good time. Inmate filed a Step 1 and Step 2 Grievance. On April 11, 2014, in response to Inmate's Step 2 Grievance, the Department reduced his loss of good time to 30 days. Inmate appealed to this Court. On December 23, 2014, this Court affirmed the Department's decision and upheld the sanction of loss of 30 days good time.

On June 5, 2014, Inmate filed a Step 1 Grievance. He alleged that the Department failed to reinstate his 200 days of good time credit, which should have changed his max-out date. On August 7, 2014, the Department denied Appellant's Step 1 Grievance. The Department explained that Inmate's 200 days of good time credit were reinstated on April 29, 2014. However, since that time, the Inmate had received 7 additional disciplinary convictions that resulted in the loss of an additional 200 days of good time credit. Therefore, the Department had changed his max-out date to reflect the loss of 200 days of good time credit. On August 17, 2014, Inmate filed a Step 2

Grievance and made the same arguments. This grievance was denied by the Department on March 30, 2015. Inmate filed a Notice of Appeal with this Court on April 13, 2015.

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 Court'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 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 Court 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) (Supp. 2014). 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 § 1-23-380(5) (Supp. 2014); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999).

DISCUSSION

Inmate alleges that the 230 days of good time credit he lost in a disciplinary hearing (Case #134), which was later reduced to 30 days, has been incorrectly calculated by the Department and resulted in an incorrect max-out date for his sentence. In his brief, Inmate argues that the Department failed to reinstate the 200 days of good time credit that was reinstated after his appeal of a February 11, 2013 conviction. Inmate argues that the Department has incorrectly calculated his max-out date.

In response to Inmate's challenge, Michael Stobbe, SCDC Branch Chief for Records Management and Release, performed a manual calculation, which confirmed Appellant's sentence had been calculated properly and that his max-out date was November 18, 2017, as of April 29, 2014. According to Stobbe's calculation, on April 29, 2014, the Department reduced Inmate's loss of good time from 200 days to 30 days related to the conviction in Case #134.


On August 13, 2015, Inmate filed a reply brief in response to the Department's brief. Inmate reiterated his initial argument and stated that the Department once again had miscalculated his projected release date.¹ Inmate does not provide any evidence to show that the Department miscalculated the loss of his good time credit or his projected max-out date. Therefore, Inmate's argument is without merit or factual basis.

The documentation of Stobbe's manual calculation and his summary of the process show that the 200 days of good time credit were indeed returned to Inmate and were not included in the current calculations of his projected release date. Consequently, I find that the Department correctly calculated Inmate's sentence.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

November 5, 2015
Columbia, South Carolina

FILED


NOV 05 2015

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I hereby 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, by the United States mail, postage paid, or in the interagency mail Service addressed to the party(ies) or their attorney(s).

This 5th day of Nov. 2015

By: 
Judicial Law Clerk

¹ In its brief, the Department included Stobbe's summary of his manual sentence calculation. In his summary, Stobbe stated that on February 11, 2013, Inmate lost 260 days of good time credit. Based on this Court's review of the record in this case, this appears to be merely a scrivener's error. Stobbe correctly used a loss of 230 days of good time in his manual calculation, which was later adjusted to 30 days. In his reply brief, Inmate alleges that Stobbe's summary shows that the Department mistakenly took 260 days of good time credit and further miscalculated his max-out date. However, Inmate does not provide any evidence to show that Stobbe's statement was anything other than a scrivener's error.