THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, *Administrative Law Judge*

Lower Case No. 2014-ALJ-04-0365-AP

Appellate Case No. 2014-002613

Kevin J. Daniels, # 247291,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

July 10, 2015

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

Christina Catoe Bigelow
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221
803-896-1738

Counsel for Respondent

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DANIEL J. CROOKS III
Staff Attorney
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct dial]
Crooks.Daniel@doc.sc.gov

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM THE DEPARTMENT'S FINAL AGENCY DECISION, WHERE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION?

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Kevin J. Daniels (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). This is an appeal from a final decision of the Administrative Law Court (ALC), which affirmed the Department's March 7, 2014 final decision denying Appellant's Step 2 grievance.

Appellant filed a Step 1 grievance on July 25, 2013 claiming his sentences were not being calculated properly and alleging that his max out date was incorrectly calculated due to a clerical error on the original sentencing sheet. (*R.* at 4). This grievance was denied when it was determined the sentences had been implemented correctly. (*Id.*) Appellant then filed a Step 2 grievance on September 12, 2013, raising the same issue and adding that he believed he was "denied due process by SCDC as well as denied counsel by the unlawful modification and erroneous calculation of [his] sentence without [him] knowing or without a hearing more than 10 months after [he] was sentenced . . . ." (*R.* at 6). The Department denied Appellant's Step 2 grievance on March 7, 2014, stating in relevant part:

> You have been given credit for all jail time credit due on your sentences. 2012GS4000680 sentenced on 9/13/12 clearly states you are to be given jail time credit in the amount of 388 days. 2013GS3201526 sentenced on 5/8/13 clearly states you are to be given jail time credit beginning 2/2/13. Furthermore, the jail time report from Lexington County shows you were detained on your probation violation 11GS32000794 beginning 2/2/13. While your sentences are concurrent, based on the jail time for each offense, your sentences do have different start and projected completion dates. All jail time has been correctly applied for each sentence.

Appellant filed his notice of appeal with the ALC on March 31, 2014 pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). (*R.* at 7). On November 21, 2014, the ALC affirmed SCDC's final agency decision.[1] (*R.* at 3). From that final order, Appellant took an appeal to this Court, filing his Notice of Appeal on December 4, 2014.

[1] The Department respectfully disagrees with the ALC's characterization of its order affirming the Department's final decision as an "Order of Dismissal" because the order does not dismiss the appeal; rather, it reaches the merits and affirms the Department's decision on the merits.

STANDARD OF REVIEW

S.C. Code § 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 reviewing tribunal 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:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (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.

S.C. Code § 1-23-610(B); *see also* S.C. Code § 1-23-380(5).

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. S.C. Code § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that 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, this Court need only find, considering the record as a whole, evidence upon which

reasonable minds could rely in reaching the same decision that the ALC reached. *DuRant v. S.C. Dep't of Health & Environ. 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.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED THE DEPARTMENT'S FINAL AGENCY DECISION BECAUSE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION.

This Court should affirm the ALC's November 21, 2014 final order for the reasons contained in that order and for the reasons contained below.

S.C. Code § 24-13-40 provides that, with limited exceptions, inmates are entitled to credit for time served prior to trial and sentencing. However, an inmate is not entitled to credit for detention prior to the time he was charged with an offense. *See Crooks v. State*, 326 S.C. 171, 175, 485 S.E.2d 374, 376 (1997) (holding that an offender could not receive credit for detention before an offense was charged). If a written sentencing order directs that an inmate receive a specific amount of pre-conviction jail time credit, then the written order controls. *See Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 344, 759 S.E.2d 398, 403 (2014) ("We see no reason why the Department should not be able to rely on unambiguous sentencing sheets as indicative of the intended sentence."); *Mention v. S.C. Dep't of Corr.*, S.C. Sup. Ct. Order, at 3 (filed Oct. 20, 1999) (unpublished) ("In our opinion, the Department

of Corrections' authority to run the state's prison system does not give it the power to change a sentence imposed by a trial court.") (copy attached).

In this appeal, Appellant claims he should be receiving additional pre-conviction jail time credit on his current sentences. However, contrary to Appellant's claims, his jail time credit has been correctly calculated. On June 8, 2011, Appellant pled guilty to third or subsequent property offense on indictment number 2011-GS-32-00794. (*R.* at 9). He was sentenced to a term of ten years' incarceration, suspended upon the service of time served and three years' probation. (*Id.*). On September 13, 2012, Appellant pled guilty to a separate charge of third or subsequent property offense on indictment number 2012-GS-40-00680 and was sentenced to six years' incarceration suspended upon service of 388 days' time served. (*R.* at 10). Subsequently, on February 2, 2013, Appellant committed a shoplifting offense, and he was arrested the same day. (*R.* at 22). Then, on March 15, 2013, Appellant's probation was revoked on indictment number 2011-GS-32-00794, and he was sentenced to five years' incarceration. (*R.* at 12). Finally, on May 8, 2013, Appellant pled guilty to the shoplifting charge for indictment number 2013-GS-32-01526; he was sentenced to eight years' incarceration. (*R.* at 11).

Here, Appellant's pre-conviction jail time has been calculated correctly. On indictment number 2012-GS-40-00680, the sentencing order directs that Appellant should receive 388 days of pre-conviction credit (*R.* at 10), and the Department credited him those 388 days as ordered. However, on indictment number 2013-GS-32-01526, the sentencing

order states only that Appellant should receive "credit for time from Feb. 2, 2013." (*R.* at 11). As noted in SCDC's final agency decision, Appellant has received credit from February 2, 2013 on that sentence.[2] Furthermore, as to Appellant's probation revocation, the jail time report provided by the Lexington County Sheriff's Department reflects that Appellant was arrested on February 2, 2013 and remained in jail until his sentencing on March 15, 2013. (*R.* at 13). Based on the relevant documentation, Appellant has been credited for pre-revocation credit from February 2, 2013.

The ALC correctly concluded that "[t]he sentencing order for indictment 12-GS-40-00680 clearly states that [Appellant] is to receive 388 days applied toward that particular sentence." (*R.* at 3). The ALC also correctly concluded that "[i]ndictment 13-GS-32-01526 also clearly states that [Appellant] is to receive credit for time served commencing on February 2, 2013, which is the date of the offense and the date of the arrest." (*Id.*). Moreover, the record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). In this case, Appellant cannot meet this burden. Accordingly, this Court should affirm the decision below.

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[2] Appellant argues he should receive 388 days of credit toward his sentence on indictment number 2013-GS-32-01526 based upon the credit he received on indictment number 2012-GS-40-00680. Appellant's argument is incorrect for two reasons. First, the sentencing order reflects only credit from February 2, 2013. Second, according to the sentencing order, Appellant's offense occurred on February 2, 2013. Per statute, Appellant cannot receive credit for detention prior to the date he committed the crime in question.

CONCLUSION

Because the ALC correctly found that the Department properly determined Appellant was not entitled to the 388 days of jail time credit for indictment 13-GS-32-01526, this Court should affirm the decision below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: 

DANIEL J. CROOKS III
Staff Attorney
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct dial]
Crooks.Daniel@doc.sc.gov

Attorney for Respondent

Columbia, South Carolina
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CERTIFICATE OF COUNSEL

I, the undersigned, certify that to the best of my ability, this Final Brief of the Department complies with Rule 211(b), SCACR and the April 15, 2014 Order from this Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Dated: July 10, 2015

DANIEL J. CROOKS III, ESQ.

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CERTIFICATE OF SERVICE

I certify that I served Appellant a copy of Respondent's *Final Brief* by depositing a copy of same in the U.S. Mail on July 10, 2015, addressed to: Kevin J. Daniels, SCDC #247291, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, S. C. 29067.

Dated: July 10, 2015

DANIEL J. CROOKS III
Staff Attorney
Office of General Counsel
Post Office Box 21787
Columbia, S.C. 29221
(803) 896-1355

Attorney for Respondent

843 248-15

The Supreme Court of South Carolina

Douglas Mention, Petitioner,

v.

Department of Corrections, Respondent.

ORDER

Petitioner pled guilty in December 1994 to armed robbery, resisting arrest, and escape. The trial court sentenced him to ten years for armed robbery, one year for resisting arrest, and one year for escape, all sentences to be served concurrently.

Petitioner has filed with this Court a letter dated September 8, 1999, regarding a change in his max-out date. The Department of Corrections (DOC) has changed his anticipated max-out date from September 7, 1999, to March 7, 2000, because, pursuant to South Carolina law, a sentence for an escape conviction must be served consecutively. See

S.C. Code Ann. § 24-13-410 (Supp. 1998).[1] The DOC has filed a return justifying its interpretation of petitioner's sentence because the trial court did not have the power to order petitioner's escape sentence to be served concurrently. Petitioner's filing is being construed as a petition for a writ of habeas corpus.

Petitioner acknowledges the statute states that a sentence for escape is consecutive; however, he questions whether the DOC has the authority to change a trial court's decision that a sentence be run concurrently. Petitioner argues that he accepted the plea agreement offered by the State, which in turn was accepted by the trial court. Moreover, petitioner notes that the DOC waited until his sentence was about to expire before extending it by six months.[2] Finally, petitioner asserts that he is without a remedy in the circuit court because of the time factor involved.

We have accepted this matter in our original jurisdiction because

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[1]Section 24-13-410 states that the "term of imprisonment [for an escape conviction] is consecutive to the original sentence and to other sentences previously imposed upon the escapee by a court of this State." S.C. Code Ann. § 24-13-410(C) (Supp. 1998).

[2]Petitioner attached to his filing a DOC request form dated August 16, 1999, which questioned the change in his max-out date. The response from the staff member, dated August 23, 1999, reveals that an audit was conducted on August 11, 1999, and the DOC concluded at that time that petitioner's escape sentence would run consecutively and petitioner's projected max-out date was now March 7, 2000.

this matter could not be entertained in the lower court without materially prejudicing petitioner. See Rule 229(a), SCACR; see also Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) ("Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction.").

"'The great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention.'" Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting Walker v. Wainwright, 390 U.S. 335, 88 S.Ct. 962, 19 L.Ed.2d 1215 (1968)).

In our opinion, the Department of Corrections' authority to run the state's prison system does not give it the power to change a sentence imposed by a trial court. Sanders v. MacDougall, 244 S.C. 160, 135 S.E.2d 836 (1964). We find that petitioner currently is being unlawfully detained. Accordingly, the writ of habeas corpus is granted, and the DOC is directed to release petitioner from custody.

IT IS SO ORDERED.

Ernest A. Finney, Jr. C.J.

A.J.

A.J.

A.J.

A.J.

Columbia, South Carolina

October 20, 1999