

THE STATE OF SOUTH CAROLINA

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In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S.C. SUPREME COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 15-ALJ-04-0331-AP

South Carolina Department
of Corrections,

Respondent,

v.

Ronald Ceo, #258464,

Appellant.

NOTICE OF APPEAL

Ronald Ceo #258464, appeals the decision of the Honorable Shirley C. Robinson dated January 6, 2016. Appellant received a copy of this decision on January 8, 2016.

January 28, 2016

✓ Ronald Ceo

Ronald Ceo #258464
Turbeville Correctional Inst.
P.O. Box 252
Turbeville, S.C. 29162

Other Counsel of Record:
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Office of General Counsel
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above named Respondent, by depositing a copy of it in the institutional mail room and addressed to Counsel of Record Daniel J. Crooks General Counsel this 28 day of January 2016 service was made by inter agency mail.

January 28, 2016

CC: file copy
Clerk of the Administrative Law Court

Ronald Ceo
Turbeville Correctional
P.O. Box 252
Turbeville, S.C. 29162

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Ronald Ceo, 258464,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 15-ALJ-04-0331-AP
Grievance No.: TCI 27-15

ORDER

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed June 6, 2015, by Ronald Ceo (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department” or “SCDC”). Appellant filed his brief on August 25, 2015. On October 29, 2015, the Department requested, and was granted an extension to file its brief by November 16, 2015. On November 6, 2015, Appellant filed a Motion to Resolve the Appeal in Adverse to the Respondent pursuant to ALC Rule 62, contending the Department did not timely file its brief. Thereafter, on November 10, 2015, the Department filed its brief.

Initially, I deny Appellant’s motion to resolve this appeal adverse to the Department pursuant to ALC Rule 62 because I find the Department’s brief was timely filed under ALC Rule 60, which was revised this year to extend the timeline for filing briefs. Moreover, South Carolina courts favor deciding cases on the merits rather than technicalities. Micronics, Inc. v. S.C. Dep’t of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001).

Next, in this appeal, Appellant attacks his sentence generally by arguing the Truth-in-Sentencing provisions enforced by SCDC Policy OP-21.09 are illegal because they are derived from an unconstitutional act passed by the South Carolina General Assembly. Specifically, Appellant contends the act addressed more than one subject, which violates Article III, Section 17 of the South Carolina Constitution.

For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when (1) an inmate is disciplined and punishment is imposed, or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan v. S.C. Dep’t of Corrs., 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003). Here, Appellant

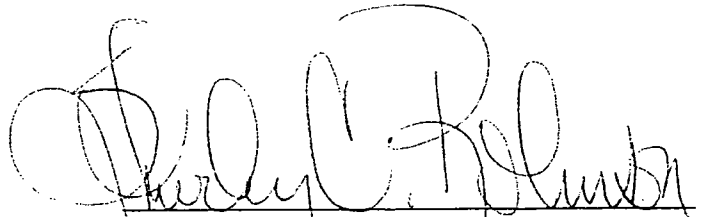
generally contests his sentence based on the Department's enforcement of Truth-in-Sentencing provisions derived from an allegedly unconstitutional act passed by the General Assembly.

This Court does not have jurisdiction to address the constitutionality of the act upon which SCDC has based its sentencing policy provisions. See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“[A]n ALJ should not rule on the constitutionality of statutes.”); id. (“ALJs are an agency of the executive branch of government and must follow the law as written until its constitutional[it]y is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.”).

Reviewing Appellant's sentence generally under the current law, I find substantial evidence supports the Department's calculation of Appellant's sentence. Appellant is serving a thirty-five year sentence for Homicide by Child Abuse. Under sections 24-13-100 and 24-13-150 of the South Carolina Code, Appellant's conviction is a “no parole” offense, and he is required to serve a mandatory minimum of at least eighty-five percent of his sentence. Furthermore, goodtime credits, etc., cannot be used to bring Appellant's sentence below the mandatory minimum. S.C. Code Ann. § 24-13-120(B). Here, Appellant's sentence start date is March 31, 1998. Eighty-five percent of his thirty-five year sentence is equivalent to twenty-nine years and nine months, which aligns with the Department's projected release date for Appellant of December 22, 2017. Accordingly, I find substantial evidence supports the Department's calculation of Appellant's sentence, and this Court will not substitute its judgment for that of the agency where substantial evidence supports the Department's decision, and the Department's decision is not arbitrary, capricious, or affected by any personal bias or prejudice. See S.C. Code Ann. § 1-23-380(5); Skipper v. S.C. Dep't of Corrs., 370 S.C. 267, 273, 633 S.E.2d 910, 913 (Ct. App. 2006) (reviewing whether prison officials acted arbitrarily, capriciously, or from personal bias).

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

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

January 10th, 2016
Columbia, South Carolina

6 January 2016
JA