STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from the Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge
ALC Case No. 13-ALJ-04-0705-AP

Opinion No. 2015-UP-505 (S.C. Ct. App. filed 11/4/15)
Appellate Case No. 2016-000430

CHARLES RAY CARTER, #246054,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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ISSUE PRESENTED

The Court of Appeals properly affirmed the decision of the Administrative Law Court rejecting Petitioner's challenge to his December 1997 sentence where, although Petitioner's sentence was initially entered incorrectly into SCDC's system based upon an erroneous CDR code, the sentence was corrected in 1998 to reflect the proper sentence under the proper statute as reflected on the sentence sheet.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Charles Ray Carter (Petitioner), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Petitioner filed a Step One Grievance on October 4, 2012, alleging that SCDC improperly modified his max-out date under Tant v. South Carolina Department of Corrections, 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011). This grievance was investigated and denied. (R. p. 8). Petitioner filed a Step Two Grievance on January 7, 2013 alleging that 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. p. 9). Respondent, through Division Director Jannita C. Gaston, denied Petitioner's Step Two Grievance on August 23, 2013, and Petitioner received Respondent's final decision on or about September 16, 2013. (Id.).

On October 7, 2013, Petitioner filed a notice of appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R. p. 10). In an order dated May 1, 2014, Administrative Law Judge Deborah Brooks Durden issued a comprehensive order affirming Respondent's final agency action and denying Petitioner's appeal. (Id.). Petitioner appealed to the South Carolina Court of Appeals, and on November 4, 2015, the Court of Appeals issued an opinion affirming the Administrative Law Court's order. See Charles Ray Carter v. South Carolina Department of Corrections, Op. No. 2015-UP-505 (S.C. Ct. App. filed 11/4/15). Petitioner now seeks review of the Court of Appeals' decision.

STANDARD OF REVIEW

S.C. Code Ann. § 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:
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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;
>
> (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 Ann. § 1-23-380(5).

In an appeal of a 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 Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). 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.

ARGUMENT

The Court of Appeals properly affirmed the decision of the Administrative Law Court rejecting Petitioner's challenge to his December 1997 sentence where, although Petitioner's sentence was initially entered incorrectly into SCDC's system based upon an erroneous CDR code, the sentence was corrected in 1998 to reflect the proper sentence under the proper statute as reflected on the sentence sheet.

On December 10, 1997, the Honorable John C. Hayes III sentenced Petitioner to thirty years for violating S.C. Code Ann. § 44-53-0375(B), offense code 0114 ("Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine - 3rd or sub. offense"). (R. p. 4). On the sentencing sheet, however, the York County Clerk of Court's office wrote in the incorrect CDR code of 0102,[1] although next to the incorrect code is a description of the actual offense for which Petitioner was convicted (verbatim from the sentencing sheet: "Poss crack cocaine WID"). (Id.). At the time this incident took place (that is, in the late 1990s), it was common practice for Respondent to rely exclusively on the CDR codes for purposes of inputting an inmate's sentence into the computer system, and Court Administration had instructed Respondent to go by the CDR codes only. (See R. p. 7). In recent years, with subsequent developments in case law, new rules emerged regarding the procedure inmates can follow to challenge the recalculation of or change to the sentence entered upon their entry to the Department of Corrections. (R. p. 12). However, these rules did not exist in 1998. (Id.).

Therefore, upon his entry into Respondent's custody, Petitioner's sentence was entered under the incorrect CDR code of 0102 instead of 0114. (Id.). Sometime in early 1998, Petitioner—not Respondent—took the initiative to contact the York County Clerk of Court to inquire about a then-existing detainer. (R. p. 11). In his letter, Petitioner acknowledged that his

[1] The old CDR 0102 code was for S.C. Code Ann. 44-53-0375(A) ("Drugs/Possession of less than one gram of

conviction was for "poss of crack with intent to distribute." (Id.). However, Petitioner also stated that he was not sentenced "for mafacturing [sic] a control [sic] substance."[2] (Id.).

On October 13, 1998, Respondent's inmate records office received a letter in reply to Petitioner's letter to the York County Clerk of Court. (R. p. 6). The letter was from York County Deputy Clerk of Court, Peggy C. Carroll, who wrote:

> I HAVE BEEN REQUESTED BY AN INMATE, CHARLES RAY CARTER, TO PROVIDE YOU WITH COPIES OF HIS SENTENCE SHEET FOR A CONVICTION ON 12/20/97 INDICATING HIS CONVICTION WAS FOR POSS. CRACK COCAINE WITH INTENT TO DIST. 3RD OFFENSE AND NOT MFG. CONTROL SUBSTANCE AS HE INDICATED IN HIS LETTER.

(Id.). As a result of receiving notice of the clerical error made on the sentencing sheet, Respondent updated its records to reflect the proper sentence. (R. p. 7). This Court should be aware that the true bill returned against Petitioner by the York County grand jury on May 22, 1997 was for "Possession of Crack Cocaine with Intent to Distribute," which falls under CDR code 0114 based on § 44-53-0375(B)—not CDR code 0102, which is for possession of less than one gram of ice, crank, or crack cocaine and is based on § 44-53-0375(A). (R. p. 12). Therefore, the actual crime with which Petitioner was charged, and for which he was ultimately convicted, was a third offense of possession of crack cocaine with intent to distribute. (Id.). The York County Deputy Clerk's letter simply verified that fact. (Id.).

The Court of Appeals addressed a similar issue in State v. Bennett, 375 S.C. 165, 650 S.E.2d 490 (Ct. App. 2007). In Bennett, the offender challenged his original sentence length

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ice, crank, or crack cocaine - 3rd or sub. offense").

[2] Petitioner is correct that he was not sentenced for manufacturing a drug. However, the language in S.C. Code Ann. § 44-53-0375(B) includes any "person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or

and argued that because he was convicted as a first offender, he was not required to participate in a Community Supervision Program. 375 S.C. at 166, 650 S.E.2d at 491. Bennett argued that his sentence should have been calculated based upon the statutory provision listed both on the arrest warrant and the indictment, rather than the CDR codes. In Bennett's case, his arrest warrant and the indictment listed that he was charged with distribution of crack cocaine in violation of S.C. Code Ann. § 44-53-375(B)(1), which read in relevant part: "(B) A person who manufactures, distributes, dispenses . . . ice, crank or crack cocaine, in violation of Section 44-53-370, is guilty of a felony and, upon conviction: (1) for a first offense must be sentenced to a term of imprisonment of not more than fifteen years . . ." (emphasis in original). 375 S.C. at 167, 650 S.E.2d at 491-92. Moreover, "the arrest warrant list[ed] the Criminal Docket Report (CDR) Code, or Offense Code, #0112." 375 S.C. at 167, 650 S.E.2d at 492. At that time, CDR Code 0112 indicated a first offense for "Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine." Id.

However, the indictment cover listed a different CDR code, i.e. CDR Code 0107, which indicated a Class E felony for "Drugs/Distribute, sell purchase, etc., drug other than crack cocaine . . . near school." Id. The inclusion of the correct statutory section but incorrect CDR code was the first of two clerical errors that were present in the Bennett case. The second clerical error occurred on the sentencing sheet, which "incidate[d] that he pled to and was convicted of "Distribution of Crack Cocaine in violation of § 44-53-375(B)(1) of the S.C. Code of Laws . . . ." Id. On the sentencing sheet, notwithstanding the correct statutory provision, CDR Code 0113 appears. At that time, CDR Code 0113 indicated a second offense

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possesses with intent to distribute, dispense, or deliver . . . cocaine base . . . ." Id (emphasis added).

for "Drugs/Manufacture, distribution, etc., ice, crank, crack cocaine." Id. Finally, there was no extant record of the original sentencing hearing. 375 S.C. at 168, 650 S.E.2d at 492.

In its opinion, the Court of Appeals explained the history behind CDR codes in South Carolina:

> Essential to a determination on Bennett's claim is an understanding of CDR codes and how they are utilized in the overall judicial process. CDR codes are four digit numerical codes which represent the criminal offenses created by the South Carolina General Assembly and common law. The codes were developed in the late 1970's in a collaborative effort between the South Carolina Justice Department (SCJD), DPPP, and SCDOC. They were created at a time when computer systems had limited memory and did not have the capacity to maintain references to specific statutes which could contain many digits. The shorter CDR codes saved computer space and provided a consistent administrative shortcut to be used by all three departments. The code developers started with a list of statutory criminal offenses and assigned each a number. As laws change and new offenses are created, the codes are updated. The master list of CDR codes is now maintained by the SCJD which monitors the legislative process to determine required changes and corrects errors in the codes.

375 S.C. at 172-73, 650 S.E.2d at 494-95 (internal citations omitted). The court continued by emphasizing that, "[w]hile the [CDR] codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law." 375 S.C. at 173, 650 S.E.2d at 495. Instead, "the elements of a crime, its penalties and other related matters are governed by the Code of Laws and the common law alone[, and that] [a]ny errors in a CDR code do not affect the crime, [or] its characterization as violent or non-violent . . . ." Id. Citing the South Carolina Judicial Department's website, the court underscored that "'[t]he South Carolina Code of Laws is the controlling authority for classifications, definition and penalties for criminal offenses, and **the statute itself should always be consulted.**'" Id. (citing S.C. Jud. Dep't, CDR Codes Frequently Asked Questions,

[http://www.judicial.state.sc.us/cdr/]) (emphasis in original). Finally, the court ended its discussion of CDR codes vs. statutory codes with this sentence: "Because the South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, a statute listed on a sentencing sheet, and not a CDR code, will dictate a criminal's sentence." Id.

In the case at bar, Respondent's updating of Petitioner's record to reflect the proper sentence did not implicate due process concerns, and the ALC properly affirmed Respondent's final agency decision based on the existence of substantial evidence and the absence of any clearly erroneous, arbitrary, or capricious decision, or a decision that resulted from an abuse of discretion. That court correctly noted that the facts presented in this case do not implicate Tant v. S.C. Dep't of Corr., 395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011), *affirmed as modified* 408 S.C. 334, 759 S.E.2d 398 (2014), or subsequent cases. (R. p. 12) (noting that "there is no ambiguity whatsoever as to the sentence imposed on the sentencing sheet in this case"). The ALC also noted that "the nature of the crime for possession with intent to distribute, the grand jury's true bill, and all other documentation in this case supports SCDC's 1998 correction of Petitioner's CDR code for purposes of recalculating his sentence in accordance with the sentencing court's order." (Id.). The court concluded by stating that Petitioner had failed to carry his burden of proving that Respondent's final agency decision was "clearly erroneous, or arbitrary or capricious, or an abuse of discretion." (R.p. 13).

Petitioner has failed to show that any of the factors contained in § 1-23-610(B) are present in this case such that reversal is warranted. The arguments in this case were briefed and thoroughly addressed by the ALC, and the ALC's final order in this case comports with

the applicable statutes and case law governing judicial review of sentence calculation grievance appeals from inmates. The Court of Appeals properly affirmed the ALC's order, and Respondent respectfully requests that this Court affirm the Court of Appeals' decision.[3]

CONCLUSION

Petitioner is serving the proper sentence under the proper statutory code section. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

March 25, 2016

[3] Notably, Petitioner admits in his Petition that he began his "never ending challenge to his modified sentence" in June of 1998. (See Petition for Writ of Certiorari, last sentence on page entitled "Statement of the Case."). It is unclear how his current challenge is timely, especially considering that SCDC policy requires that an inmate file a grievance "within 5 working days of the alleged incident." See SCDC Policy GA-01.12, section 13.2, *available at* http://www.doc.sc.gov/pubweb/policy/GA-01-12.htm1458856821522.pdf. Even assuming Petitioner was relying on the Court of Appeals' decision in Tant, as he claimed in his Step 1 Grievance form, that opinion was filed on October 26, 2011. See Tant v. South Carolina Department of Corrections, 395 S.C. 446, 718 S.E.2d 753 (2011), *affirmed as modified*, 408 S.C. 334, 759 S.E.2d 398 (2014). However, Petitioner's Step 1 Grievance form was not filed until nearly a year later, on October 4, 2012. (See R. p. 8).

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Return to Petition for Writ of Certiorari** to Petitioner, addressed as follows: **Charles Ray Carter**, # 246054, Ridgeland Correctional Institution, Post Office Box 2039, Ridgeland, South Carolina, 29936.

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

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