

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jose Maldonado, 312648,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 15-ALJ-04-0567-AP
Grievance No.: KRCI 4415-14

ORDER

RECEIVED
JUN 16 2016
SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed October 20, 2015, by Jose Maldonado (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). In this appeal, the Appellant argues the Department has miscalculated his prison sentence.

On December 3, 2015, the Appellant filed a "Motion for Leave to Conduct Discovery" and Appellant's Brief. On December 18, 2015, this court issued an order denying the motion on the grounds that such discovery is not permitted under ALC rules. The Department filed the Record on Appeal on January 4, 2016. The Appellant seems to have objected to the order denying the motion and the contents of the Record on Appeal and filed a "Writ of Mandamus" with the Court of Appeals. The Court of Appeals construed the Appellant's filing as an improperly perfected appeal and eventually dismissed the case (Number 2016-000055). The matter was remitted to this court on February 29, 2016.

Subsequently, on April 1, 2016, the Appellant filed a "Motion for Summary Judgement" with a supporting affidavit and additional documents. Among other things, the Appellant argued that the the Department had failed to file a brief. On May 2, 2016, the Department filed the Respondent's Brief and a Motion to File out of Time. The Department cited Appellant's filings in the Court of Appeals as reason for confusion and the late brief. On May 16, 2016, the Appellant filed a response to the Department's motion and a Reply Brief.

Because this is an appeal, and not a contested case, the court may not apply the South Carolina Rules of Civil Procedure in order to entertain a motion for summary judgment. See SCALC Rule 68. Instead, the court will construe the Appellant's motion as one to resolve the appeal adversely to the Department for failure to meet prescribed time limits, pursuant to SCALC

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Rule 62.¹ Pursuant to SCALC Rule 3(B), the court may for good cause shown extend the time to file, unless otherwise proscribed by rule or law. After reviewing the file and the Department's Motion to File out of Time, the court concludes that the Appellant's interlocutory Court of Appeal filing constitutes good cause for confusion regarding the briefing deadline. Therefore, the court denies the Appellant's motion and grants the Department's Motion. Having received the briefs of all the parties and ruled on the above motions, the court now reviews the case on the merits.

ISSUE ON APPEAL

Whether the Department erred in calculating the Appellant's sentence under the relevant statutes.

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 *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). A liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in

¹ The court notes that the Appellant makes his arguments based upon an older version of ALC rules. In April of 2015, new rules went into effect that extended the filing deadlines for inmate appeals. *See* SCALC Rules 59 & 60(A).

violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

In this case, the Appellant seems to be challenging the overall validity of his sentences. Because this court exists to review the actions of administrative agencies and not the actions of circuit court judges, this court cannot rule on the validity of the Appellant's sentences. *See Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259–60, 531 S.E.2d 507, 508–09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al-Shabazz*). Instead, this court reviews the Appellant's case to determine if the Department is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007).

The Appellant has been committed to the Department to serve multiple concurrent sentences. The longest sentence the Appellant is currently serving is twenty (20) years for Trafficking Methamphetamines 28–100 grams, second offense. The Appellant was sentenced on April 10, 2007. However, the Department has credited the Appellant with time served prior to sentencing, creating a sentence "start date" of August 6, 2005. The earliest date by which the Appellant could potentially be released is determined by the rules of "no parole" offenses. The Appellant was convicted of Trafficking Methamphetamines pursuant to section 44-53-375(C)(2)(b) of the South Carolina Code. This offense is classified as a Class A felony, pursuant to section 16-1-90(A). A Class A felony is one to which a penalty of not more than thirty years applies, as stated in section 16-1-20(A). A Class A felony is a "no-parole offense." S.C.

Code Ann. § 24-13-100 (2007).² An inmate serving a no-parole offense “is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.” S.C. Code Ann. § 24-13-150(A) (Supp. 2015).³ “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.” *Id.*

The Appellant was sentenced to twenty (20) years, which is seven thousand three hundred (7,300) days. Eighty-five (85) percent of seven thousand three hundred (7,300) is six thousand two hundred five (6,205) days. Assuming that the Department correctly applied time served and running the sentence from August 6, 2005,⁴ the earliest possible date by which the Appellant could be released is August 2, 2022.⁵ Because the Department reached the same conclusion in its final decision and because the Appellant has established no reason to differ from that conclusion, the court affirms.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Appellant’s Motion to Resolve Appeal Adversely is **DENIED**.

IT IS FURTHER ORDERED that the Respondent’s Motion to File out of Time is **GRANTED**.

IT IS ALSO ORDERED that the decision of the Department is **AFFIRMED**.

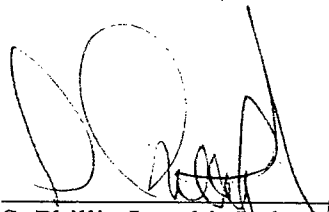
² Recently, the Court of Appeals found that this statute was preempted for the purposes of calculating the sentence for certain drug offenses by the expression of legislative intent contained in amendments to section 44-53-375 made in 2010. *See generally Bolin v. S.C. Dep’t of Corrs.*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) (reh’g denied Feb. 24, 2016). However, in this case, the Appellant was sentenced prior to the enactment of those amendments and under a different subsection.

³ Section 24-13-150 was amended in 2010. However, subsection (A), which applies in this case, was not altered in any way that affects the issues presented here.

⁴ Section 24-13-150 neither expressly includes, nor expressly excludes, time served from the percentage calculation. However, it stands to reason that time served is indeed time served on the sentence imposed and that credit for that time would be included in the calculation. This conclusion is further supported by the fact that the Department appears to have interpreted the law in that manner and by the rule that ambiguities in sentencing statutes are construed in favor of the defendant. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (quoting *Dunton v. S.C. Bd. of Exam’rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)) (“The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.”); *Nelson v. Ozmint*, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (citing *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)) (“When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.”).

⁵ The court notes that a budget proviso regarding release dates from the 2007 to 2008 fiscal year budget would be applicable to the Appellant. *See* 2007 S.C. Act 117, Part 1B, § 37.25 (effective July 1, 2007). However, the court does not apply it here since the Appellant’s actual release date may vary.

AND IT IS SO ORDERED.

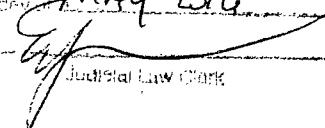


S. Phillip Lenski, Judge
S.C. Administrative Law Court

May 20, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

I do 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 thereof,
in the United States Mail, postage paid, or by other interagency
mail service addressed to the party(ies) or their attorney(s).

2016 on May 20, 2016

Judicial Law Clerk