

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 15-ALJ-04-0567-AP
Appellate Case No. 2016-001274

RECEIVED
AUG 18 2016
SC Court of Appeals

JOSE ALBERTO MALDONADO, # 312648,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Jose Alberto Maldonado, an inmate in the custody of the South Carolina Department of Corrections. On December 11, 2014, Appellant submitted a Step One Grievance complaining about the Department's calculation of his sentence. The Step One Grievance was denied on the ground that no error was found in Appellant's sentence calculation. On January 9, 2015, Appellant submitted a Step Two Grievance form, which was also denied on the ground that there were no errors in the calculation of Appellant's sentence. Appellant filed a Notice of Appeal in the Administrative Law Court on October 19, 2015. During the pendency of the appeal in the Administrative Law Court, Appellant filed an interlocutory appeal to the South Carolina Court of Appeals, which was dismissed on February 10, 2016 and remitted on February 29, 2016. Thereafter, the appeal in the Administrative Law Court went forward, and on May 20, 2016, the Honorable S. Phillip Lenski issued an order affirming the decision of the Department of Corrections. This appeal follows.

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:

- (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 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 ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

The jurisdiction of the Administrative Law Court ("ALC") to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections. Initially, the Administrative Law Court exists to review the actions of administrative agencies, and it does not have jurisdiction to review the actions of circuit court judges in sentencing defendants. Accordingly, the Administrative Law Court properly declined to rule upon the validity of Appellant's sentences. (See Order, page 3 of 5). Furthermore, Appellant has failed to show that the Department of Corrections committed any

error with respect to calculation of his sentence. As the Administrative Law Judge found, Appellant was committed to the Department of Corrections to serve multiple concurrent sentences, the longest of which is a twenty-year sentence for drug trafficking, an eighty-five percent “no parole” offense. (See Order, page 3 of 5). See also S.C. Code § 24-13-100 and § 24-13-150(A). The earliest possible date Appellant could be released from his twenty-year sentence – considering his sentence start date of August 6, 2005 as ordered by the sentencing judge – is August 2022. (See Order, page 4 of 5). This is the max-out date calculated by the Department of Corrections. (See Order, page 4 of 5). Appellant has failed to show that the Department’s calculation is incorrect in any way. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

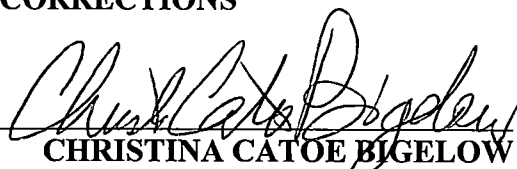
CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court’s decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



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August 18, 2016

STATE OF SOUTH CAROLINA
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Administrative Law Judge S. Phillip Lenski

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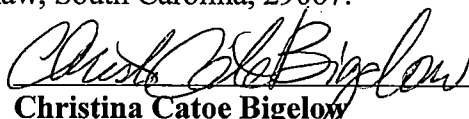
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Jose Alberto Maldonado**, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina, 29067.



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August 18, 2016



South Carolina
Department of
Corrections

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

August 18, 2016

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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RE: Jose Alberto Maldonado, # 312648, v. South Carolina Department of Corrections
Appellate Case No. 2016-001274

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Jose Alberto Maldonado, # 312648
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